



# Request for Tenders

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## Ayr Industrial Estate Expansion – Stage 1

Tender Number: TBSC/24/023

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## Background

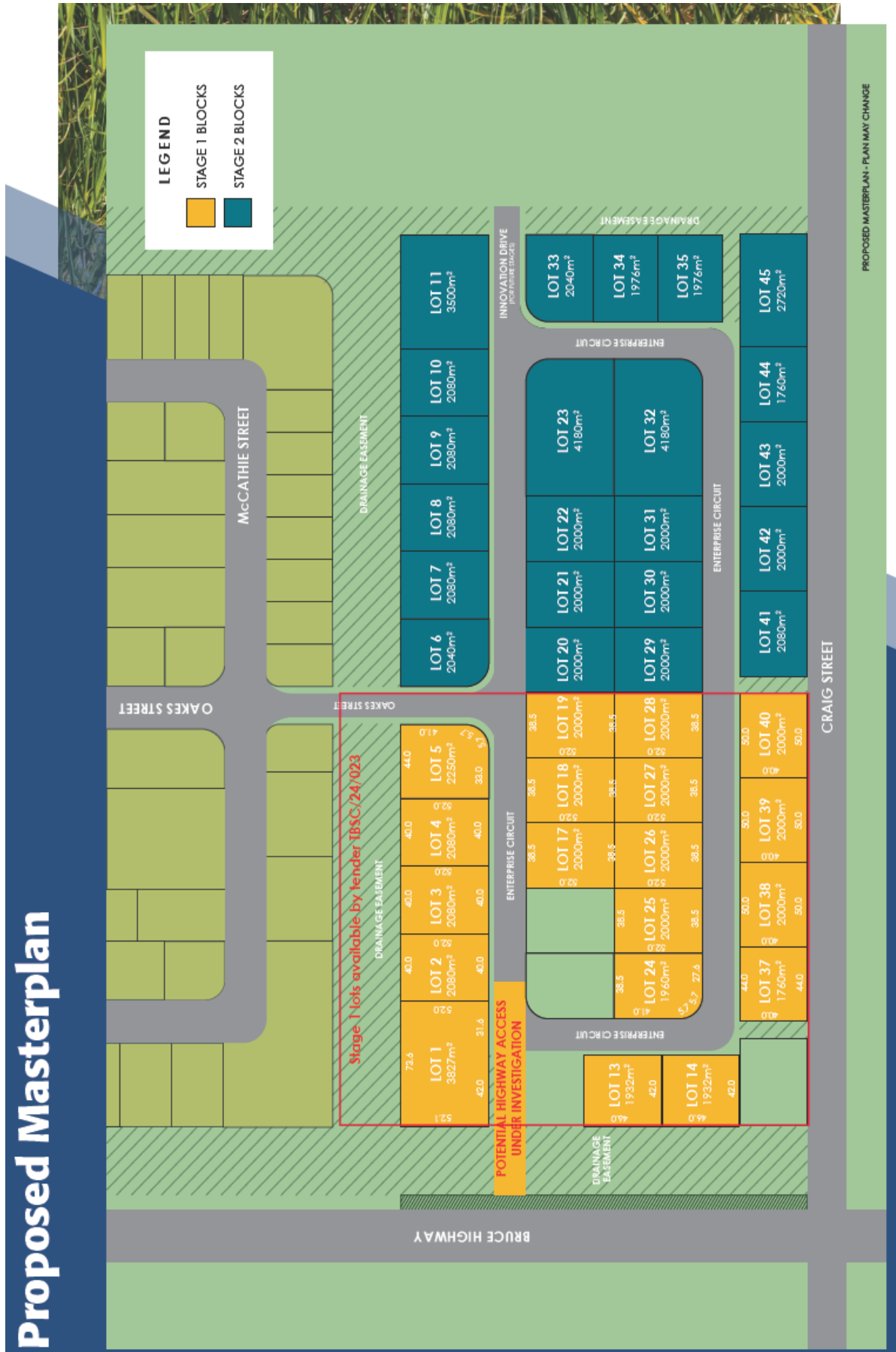
The Ayr Industrial Precinct is a Burdekin Shire Council (**Council**) initiated development which is expanding the existing Ayr Industrial Estate. The expansion will provide more industrial land through a staged release (the **Expansion Area**). The expansion will establish new services for the community, create local employment opportunities and retain young people in the region, enable economic development and deliver significant social and economic benefits for the community.

Pursuant to section 228(1)(b) of the *Local Government Regulation 2012* (Qld), Burdekin Shire Council ("**Seller**") invites tenders from interested parties for the purchase of the Property.

Lots available within the Expansion Area as a part of Tender TBSC24/023 are as follows, and highlighted in the red box on the following masterplan:

- Lot 1
- Lot 2
- Lot 3
- Lot 4
- Lot 5
- Lot 13
- Lot 14
- Lot 17
- Lot 18
- Lot 19
- Lot 24
- Lot 25
- Lot 26
- Lot 27
- Lot 28
- Lot 37
- Lot 38
- Lot 39
- Lot 40

## Proposed Masterplan



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## Request for Tenders – Ayr Industrial Estate Expansion – Stage 1, Ayr Q

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this Request for Tenders, unless inconsistent with the context or subject matter:

- (a) **Acceptance Date** means 24 September 2024;
- (b) **Annexures** means an annexure to this Request for Tenders;
- (c) **Buyer** means the name of the Tenderer's entity nominated and named as Buyer in the Contract;
- (d) **Closing Date** means 5pm Monday, 19 August 2024;
- (e) **Contract** means the Contract at **Annexure B**;
- (f) **Documents** means the Tender Form and other documents required to be submitted to the Seller if a Tender is made as required by this Request for Tenders;
- (g) **GST** means the Goods and Services Tax as provided for by the GST Law;
- (h) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* as amended or replaced from time to time and also includes any associated legislation and delegated legislation;
- (i) **Guarantor** means the person or corporation who will guarantee to the Seller the obligations of the Tenderer upon execution of the Tender Form and the Contract as Guarantor in terms of the Guarantee in the Contract;
- (j) **Notice of Acceptance of Tender** means a notice given by the Seller or the Seller's agent to a Tenderer pursuant to clause 6.1 of these Tender Conditions;
- (k) **Property** means the property (as that term is defined in the Contract) described in the Tender Form, which the Tenderer makes this Tender on under this Request to Tender;
- (l) **Purchase Price** means the sum which a Tenderer offers to pay for the Property as part of a Tender;
- (m) **Request to Tender** means this Request for Tenders – Ayr Industrial Estate Expansion, Ayr in the State of Queensland;
- (n) **Seller** means Burdekin Shire Council;
- (o) **Seller's Solicitor** means Keir Steele Waldon Lawyers, PO Box 1015, Townsville Q 4810 or the firm that succeeds the Seller's Solicitor, as the case may be;
- (p) **Tender** means an offer made by a Tenderer to purchase the Property pursuant to clause 2.1 of this Request for Tenders and includes the Documents;

- (q) **Tender Conditions** means the conditions of Tender of which this Invitation for Tenders Contract, and all other Annexures form part;
- (r) **Tender Form** means the form in **Annexure A**;
- (s) **Tender Sum** means \$1,000.00;
- (t) **Tenderer** means a person or corporation that may submit a Tender;
- (u) **You/Your** means a reference to a Tenderer or person interested in submitting a Tender in terms of the Tender Conditions.

## 1.2 Interpretation

In this Request for Tenders, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing the singular number include the plural number;
- (d) words importing the plural number include the singular number;
- (e) the masculine gender must be read as also importing the feminine or neuter gender;
- (f) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
- (g) headings are for reference purposes only and must not be used in interpretation;
- (h) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (i) a reference to a statute includes all regulations and subordinate legislation and amendments;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- (k) a reference to a monetary amount is a reference to an Australian currency amount;
- (l) an obligation of two or more parties binds them jointly and each of them severally;
- (m) an obligation incurred in favour of two or more parties is enforceable by them severally;
- (n) references to time are to local time in Queensland;
- (o) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;

- (p) a reference to a Business Day means a day that is not a Saturday, Sunday or public holiday in Townsville and/or the Burdekin;
- (q) if any time period specified in this deed expires on a day which is not a business day, the period shall expire at the end of the next business day;
- (r) a reference to a month means a calendar month.

## **2. TENDER**

### **2.1 Your Tender must include:**

- (a) a Tender Form containing the following information:
  - (i) the full name of the Tenderer;
  - (ii) the Tenderer's address, telephone contact number and email address; and
  - (iii) the Tenderer's ABN (if applicable);
  - (iv) if the Tenderer is a company:
    - A. the ACN of the company; and
    - B. the full names of the Directors of the Company, who will be listed as Guarantors on the Contract;
  - (v) if the Tenderer is a trust, the full name of the Trustee (including ACN if a corporate trustee) and full name of the Trust (including the ABN, if applicable);
  - (vi) the proposed lot numbers that the Tenderer proposes to submit an offer on (including, in order of preference, subsequent preferred proposed lots should the Tender be unsuccessful);
  - (vii) the Purchase Price/s proposed to be paid by the Tenderer;
  - (viii) any conditions required by the Tenderer; and
  - (ix) the proposed Settlement Date of the transaction.
- (b) if the Tender Form is executed under a Power of Attorney, a certified copy of the Power of Attorney that is registered at Titles Queensland/Department of Resources that evidences that the attorney has the necessary power to sign the Tender Form on behalf of the Tenderer;
- (c) a bank cheque for the Tender Sum payable to Keir Steele Waldon Lawyers Law Practice Trust Account or evidence that the Tender Sum has been deposited to Keir Steele Waldon Lawyers Law Practice Trust Account.

### **2.2 The Tender Form must be dated on the day that it is signed by the Tenderer and the Tender Form must be executed:**

- (a) by each person or corporation comprising the Tenderer;

- (b) the Guarantor/s (if applicable); and
- (c) if the Tenderer is a corporation, in accordance with its constitution and the *Corporations Act 2001* (Cth).

### **3. SUBMISSION OF TENDER**

- 3.1 The completed Tender must be emailed to Burdekin Shire Council via the following email address [tenders@burdekin.qld.gov.au](mailto:tenders@burdekin.qld.gov.au) with the subject line 'Tender - Ayr Industrial Estate Expansion - Stage 1'.

Tenderers are encouraged to contact Eliza Lovell at Burdekin Shire Council on (07) 4783 9800 to confirm Council's receipt of the tender.

- 3.2 Completed tender must be accompanied by evidence of payment of the Tender Sum of \$1,000.00 to **Keir Steele Waldon Lawyers Law Practice Trust Account**. Should your Tender be unsuccessful, the Tender Sum will be refunded. In the event that the successful Tenderer changes their mind between notification of acceptance of tender and formally executing the sales contract, Council reserves the right to withhold the Tender Sum at its absolute discretion.
- 3.3 The Seller is not obliged to consider any Tender unless it is made in accordance with the Tender Conditions but may in its absolute discretion consider any Tender which does not comply with the Tender Conditions and may agree to proposed amendments or additions to the Contract requested by any Tenderer.

### **4. EFFECT OF TENDER**

Each Tender submitted constitutes a non-binding offer to purchase the Property according to the Tender Conditions and Tender Form. The offer constituted by the Tender (including the Guarantor's agreement to guarantee the obligations of the Tenderer) is irrevocable and will remain open for acceptance by the Seller at any time up to the Acceptance Date.

### **5. RESERVATIONS BY AND RIGHTS OF SELLER**

- 5.1 The Seller reserves the right to:
- (a) consider, negotiate (including soliciting higher or better offers) and accept tenders, offers or proposals, whether or not in compliance with or conforming to or resulting from these Tender Conditions and whether before or after the Tender Decision Date;
  - (b) accept or reject any Tender including the highest Tender, without being accountable for or required to give reasons for the exercise of that discretion;
  - (c) extend the Closing Date; or
  - (d) seek the agreement of any or all Tenderers to extend the Acceptance Date;
  - (e) seek clarification from any Tenderer of any part of a Tender after the closure of the invitation to Tender; or
  - (f) withdraw the Property for sale for any reason;
  - (g) waive compliance with any of the Tender Conditions;



- (h) effect the sale of the Property to any person at any time on any terms whether or not under these Tender Conditions; and/or
- (i) give preference to a Tender where multiple lots are being sought, despite the price tendered being the primary criterion for assessment of Tenders.

## 5.2 The Seller:

- (a) may conduct the procurement process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with these Tender Conditions;
- (b) makes no representations and provides no undertakings other than to invite the submissions of Tenders;
- (c) is not responsible for, and will not pay or reimburse expenses, losses or damages which may be incurred by a tenderer in the preparation or submission of a tender;
- (d) is not bound to accept the highest or any tender;
- (e) will, if it accepts a Tender, accept the Tender which is most advantageous to the Seller having regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld);
- (f) shall not be liable upon any claim or for any loss (including loss of potential profit or opportunity) arising out of or in connection with this procurement process (including the exercise by the Seller of any of its rights or a breach of any express or implied term of the request for tender).

## 6. ACCEPTANCE OF TENDER

- 6.1 The Seller may accept your Tender by notifying you in writing that your Tender has been accepted.
- 6.2 If accepted, the Seller will instruct the Seller's Solicitor to prepare the necessary Contract, for submission to you for review, and acceptance. The Contract will include the Buyer details and may include the proposed conditions suggested on the Tender Form (at the discretion of the Seller).
- 6.3 The parties must work expeditiously and collaboratively to negotiate and execute the Contract of Sale for the Property.

## 7. DEPOSIT

- 7.1 The Tender Sum will become part-payment of the deposit paid under the Contract upon acceptance of your Tender.
- 7.2 Under the Contract of Sale, the Deposit will be an amount which is equal to 10% of the Purchase Price of that Contract, reflected as:
  - (a) Initial Deposit: \$1,000.00 paid when the Tender was submitted; and
  - (b) Balance Deposit: the amount to equal the balance of the 10% of the Purchase Price.

## **8. UNSUCCESSFUL TENDERS**

- 8.1 The Seller will within twenty (20) Business Days after the Acceptance Date notify each unsuccessful Tenderer that its Tender has not been accepted and will at that time;
- (a) return the documents submitted by that Tenderer; and
  - (b) repay the Tender Sum paid by that Tenderer by delivery of a trust account cheque made payable to the Tenderer.

## **9. REPRESENTATIONS AND CONDUCT**

- 9.1 If you Tender to purchase the Property you may only do so on the basis that you warrant and represent that:
- (a) you will only liaise with, contact and correspond with the nominated Tender representative of the Seller and no other employee or elected member of Council;
  - (b) you do not rely on any representation, letter, document, or conduct oral or in writing varying the Tender Conditions in any way;
  - (c) you accept that the Tender Form, the Contract, and the Tender Conditions constitute the only agreement between you and the Seller, and the information provided in those documents is accurate;
  - (d) you have not relied upon any promise, representation, warranty, or undertaking made by the Seller, the Seller's lawyer, or any other person on behalf of the Seller except as may be expressly provided in the Tender Conditions and you have relied entirely on your own enquiries and inspection with respect to the Property;
  - (e) no representation, letter, document, arrangement, conduct, promise, warranty, or undertaking has in any material way induced you to submit a Tender;
  - (f) the Seller will not in any circumstances be responsible for any costs or expenses incurred by you in submitting your Tender; and
  - (g) unless your Tender is accepted by the Seller there is no binding contractual relationship between you and the Seller;
  - (h) neither you nor any of your employees or agents has:
    - (i) engaged in misleading or deceptive conduct in relation to the procurement process;
    - (ii) engaged in any collusive tendering, anticompetitive conduct, or any unlawful or unethical conduct with any other tenderer, or any other person in connection with the procurement process;
    - (iii) attempted to improperly influence any of the Seller's employees, consultants or elected representatives or violated any applicable law regarding the offering of inducements in connection with the procurement process;

- (iv) accepted or invited improper assistance of any current or former employee, consultant or elected representative of the Seller, in preparing your Tender; or
- (v) used any information improperly obtained or obtained in breach of any obligation of confidentiality in preparing your Tender.

## **10. CONFIDENTIALITY**

The Tenderer and the Guarantor must not disclose or permit to be disclosed any information provided to or obtained by the Tenderer in respect of the Property which is not generally available to the public. The Tenderer's obligations under this clause shall continue irrespective of the success or otherwise of a Tender.

## **11. COMMISSION**

The Seller will not be liable for payment of any commission or brokerage to any agent or broker who may be responsible for introducing the successful Tenderer to the Property. Any such agent will be deemed to be the Tenderer's agent.

## **12. RIGHT TO INFORMATION AND DISCLOSURE**

### **12.1 Media release**

Tenderers must not, either on their own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, concerning the Tender Process in any media without the prior written approval of the Seller, in its absolute discretion.

### **12.2 Disclosure by the Seller**

Notwithstanding anything else contained in this Request for Tender, the Seller may disclose any documents and information provided by or on behalf of a Tenderer in connection with a Tender to the extent that the Seller is permitted or required to do so to comply with:

- (a) any Law including, without limitation under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld); and/or
- (b) any of its own policies, procedures and governance requirements; and

otherwise as the Seller considers is reasonably necessary to properly conduct the Tender Process (including to evaluate and obtain approval of Tenders received) to properly carry out its other functions and discharge its other obligations as a local government authority.

## **13. GENERAL PROVISIONS**

### **13.1 Governing law**

- (a) This Deed is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland.
- (b) The parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.

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### **13.2 Binding on successors**

This Deed shall be for the benefit of and binding upon the parties and their heirs, executors, successors and permitted assigns.

### **13.3 Attorneys**

Where this Deed is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.

### **13.4 Waiver**

No waiver by a party of a provision of this Tender is binding unless made in writing.

### **13.5 Severance**

If a provision of this Tender is void or unenforceable it must be severed from this Tender and the provisions that are not void or unenforceable are unaffected by the severance.

### **13.6 Further assurances**

The parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under this Tender.

### **13.7 Independent advice**

In submitting a Tender Form, the Tenderer acknowledges that they have been offered the opportunity of obtaining independent legal, accounting, planning, building and local laws advice concerning the nature and effect of this document and have availed themselves of that opportunity to the extent to which they choose to do so.

Under Local Government legislation, Council is required to offer land for sale via a tender process. The nature of the tender process forbids Council to provide a price guide for available lots. Prospective tenderers are encouraged to seek their own independent advice to help guide their tender.

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**Annexure A**    **Tender Form**

## TENDER FORM (INDIVIDUAL LOTS)

### 1. Tenderer:

Company or  
entity Name/s: \_\_\_\_\_

ABN: \_\_\_\_\_

ACN: (if  
applicable) \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Interest of Tenderers  
(if more than one):  
(e.g. Joint Tenants, Tenants in Common in Equal Shares,  
Tenants in Common in the shares of 1/3, 2/3 etc) \_\_\_\_\_

Full name of each Director:  
(leave blank if Tenderer is not a company) \_\_\_\_\_

Full name of each Partner:  
(leave blank if Tenderer is not a partnership) \_\_\_\_\_

Tenderer's Solicitor's firm: \_\_\_\_\_

Tenderer's Solicitor's name and full contact  
details: \_\_\_\_\_

### 2. Guarantor (if applicable):

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

### 3. Property Details

Please indicate size of parcel you are wanting in total: \_\_\_\_\_m<sup>2</sup>

Lot number/s:

Price tendered:     \$

If your Tender is unsuccessful for the lot/s indicated above, please provide your alternative lot/s (in order of preference)

Please indicate your interest in other Lot/s in order of preference:

Lot Number	Price Tendered

### 4. Special Conditions:

Please highlight any special conditions as part of your tender:

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### 5. Settlement Date:

If Lot Not Registered:                   60 days from notification of Registration of Plan

If Lot Registered:                   \_\_\_\_\_ days from Contract Date

The Tenderer offers to purchase from the Seller the Property as described in the Tender Conditions on the terms of the Tender Conditions set out above.

### 6. Attachments

(Tick if applicable)

- If the Tender Form is executed under a Power of Attorney, a certified copy of the Power of Attorney that is registered at the Titles Registry that evidences that the attorney has the necessary power to sign the Tender Form (or Contract) on behalf of the Tenderer
- a bank cheque for the Tender Sum payable to **Keir Steele Waldon Lawyers Law Practice Trust Account** or evidence that the Tender Sum has been deposited to Keir Steele Lawyers Law Practice Trust Account

**Signed by Tenderer**

**(Where Tenderer is a Company)**

EXECUTED by )

\_\_\_\_\_) )  
[Name of Tenderer: where a company] )  
in accordance with s 127(1) of the *Corporations* )  
*Act 2001*: )

\_\_\_\_\_) )  
[Signature]

\_\_\_\_\_) )  
[Print name]  
Director/Company Secretary/Sole Director  
[strike out if not applicable]

\_\_\_\_\_) )  
[Signature]

\_\_\_\_\_) )  
[Print name]  
Director/Company Secretary/Sole Director  
[strike out if not applicable]

**(Where Tenderer is an Individual/s)**

SIGNED by )

\_\_\_\_\_) )  
[Name of Tenderer: where an individual] )  
in the presence of: )

\_\_\_\_\_) )  
[Tenderer signature]

\_\_\_\_\_) )  
[Witness signature]

\_\_\_\_\_) )  
[Print witness name]

SIGNED by )

\_\_\_\_\_) )  
[Name of Tenderer: where an individual] )  
in the presence of: )

\_\_\_\_\_) )  
[Tenderer signature]

\_\_\_\_\_) )  
[Witness signature]

\_\_\_\_\_) )  
[Print witness name]



**Signed by Guarantor**

**EXECUTED** by )

\_\_\_\_\_) )  
 [Name of Tenderer: where a company] )  
 in accordance with s 127(1) of the *Corporations* )  
*Act 2001*: )

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

**SIGNED** by )

\_\_\_\_\_) )  
 [Name of Guarantor: where an individual] )  
 in the presence of: )

\_\_\_\_\_  
 [Guarantor signature]

\_\_\_\_\_  
 [Witness signature]

\_\_\_\_\_  
 [Print witness name]

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**Annexure B**      Draft Contract

# Contract for Commercial Land and Buildings

Tenth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Commercial Land and Buildings in Queensland.

The Seller and Buyer agree to sell and buy the Property under this Contract.

## REFERENCE SCHEDULE

**Contract Date:** \_\_\_\_\_ *If no date is inserted, the Contract Date is the date on which the last party signs the Contract*

## SELLER'S AGENT

**NAME:** Without the intervention of an Agent

**ABN/ACN:** \_\_\_\_\_

**LICENCE NO:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**SUBURB:** \_\_\_\_\_

**STATE:** \_\_\_\_\_

**POSTCODE:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_

**MOBILE:** \_\_\_\_\_

**FAX:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

## SELLER

**NAME:**

Burdekin Shire Council

**ABN:**

66 393 843 289

**ADDRESS:** 145 Young Street

**SUBURB:** AYR

**STATE:** QLD

**POSTCODE:** 4807

**PHONE:**

07 4783 9800

**MOBILE:**

**FAX:**

**EMAIL:**

enquiries@burekin.qld.gov.au

**NAME:**

**ABN:**

**ADDRESS:** \_\_\_\_\_

**SUBURB:** \_\_\_\_\_

**STATE:** \_\_\_\_\_

**POSTCODE:** \_\_\_\_\_

**PHONE:** \_\_\_\_\_

**MOBILE:** \_\_\_\_\_

**FAX:** \_\_\_\_\_

**EMAIL:** \_\_\_\_\_

## SELLER'S SOLICITOR

← or any other solicitor notified to the Buyer

**NAME:**

Keir Steele Waldon Lawyers

**REF:**

**CONTACT:**

Matthew Keating

**ADDRESS:** 28 Seventh Street

(PO Box 1015, Townsville Q 4810)

**SUBURB:** HOME HILL

**STATE:** QLD

**POSTCODE:** 4806

**PHONE:**

07 4722 0264

**MOBILE:**

**FAX:**

**EMAIL:**

mkeating@kswlawyers.com.au

**BUYER**

NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

NAME: \_\_\_\_\_ ABN: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**BUYER'S AGENT** *(If applicable)*

NAME: \_\_\_\_\_  
 ABN: \_\_\_\_\_ LICENCE NO: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**BUYER'S SOLICITOR**

← or any other solicitor notified to the Seller

NAME: \_\_\_\_\_  
 REF: \_\_\_\_\_ CONTACT: \_\_\_\_\_  
 ADDRESS: \_\_\_\_\_  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 PHONE: \_\_\_\_\_ MOBILE: \_\_\_\_\_ FAX: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**PROPERTY**

**Land:** ADDRESS: TBC  
 SUBURB: \_\_\_\_\_ STATE: \_\_\_\_\_ POSTCODE: \_\_\_\_\_  
 Built On  Vacant  
 Description: Lot: Proposed Lot XXXXX  
 on: Proposed Plan SP XXXXXXXX  
 Title Reference: To Issue  
 Area: XXXXX ← (more or less) Land sold as:  Freehold  Leasehold ← if neither is selected, the land is treated as being Freehold.  
**Present Use:** Vacant Commercial Land  
**Local Government:** Burdekin Shire Council

INITIALS *(Note: initials not required if signed with Electronic Signature)*

000034216868

Excluded Fixtures: Nil

Included Chattels: Nil

**PRICE**

Deposit Holder: Keir Steele Waldon Lawyers

Deposit Holder's Trust Account: Keir Steele Waldon Lawyers Law Practice Trust Account

Bank: NAB

BSB: 084 629 Account No: 105 419 529

Purchase Price: \$

Deposit: \$ Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below.

\$ Balance Deposit (if any) payable on:

Default Interest Rate: % ← If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc will apply.

**Cyber Warning**

Cyber criminals are targeting real estate transactions by sending fraudulent electronic communications (emails) impersonating lawyers and real estate agents. Before you pay any funds to another person or company using information that has been emailed to you or contained in this Contract, you should contact the intended recipient by telephone to verify and confirm the account details that have been provided to you.

**FINANCE**

Finance Amount: \$ N/A ← Unless all of "Finance Amount", "Financier" and "Finance Date" are completed, this contract is not subject to finance and clause 3 does not apply.

Financier: N/A

Finance Date: N/A

**BUILDING AND/OR PEST INSPECTION DATE:**

Inspection Date: N/A ← If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 4.1 does not apply.

**MATTERS AFFECTING PROPERTY**

**Title Encumbrances:**

Is the Property sold subject to any Encumbrances?  No  Yes, listed below:

TBC

← **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title in favour of other land and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011**

The Seller gives notice to the Buyer in accordance with section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Land:

(select whichever is applicable)

- is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land or
- is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

← **WARNING:** Failure to comply with section 83 of the Neighbourhood Disputes (Dividing Fences and Trees Act) 2011 by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

INITIALS (Note: initials not required if signed with Electronic Signature)

000034216868

## GOODS AND SERVICES TAX - WARNING

**Marking the GST items in the GST Table may have significant consequences for the Seller and Buyer. The Seller and Buyer should seek professional advice about completion of the GST items and not rely on the Agent to complete the GST items.**

Notes to Completion:

A. Only 1 box in the selected item must be marked.

B. If the Yes box in item GST1 is marked:

- items GST2 and GST3 must not be marked;
- despite any markings of items GST2 and GST3, Clauses 11.4, 11.5 and 11.6 do not apply.

C. If the Yes box in item GST2 is marked:

- items GST1 and GST3 must not be marked;
- despite any marking of items GST1 and GST3, Clauses 11.4, 11.5 and 11.7 do not apply.

**GST1 GOING CONCERN:**

Is this a sale of a Going Concern? Yes

If Yes, Clause 11.7 (If the Supply is a Going Concern) applies.

Otherwise Clause 11.7 (If the Supply is a Going Concern) does not apply.

If the Yes box is marked, do not complete Items GST2 and GST3.

← **WARNING:** There are strict requirements for the sale of a Going Concern under the GST Act. If in doubt about complying with those provisions, seek professional advice before marking this item.

**GST2 MARGIN SCHEME:**

Is the Margin Scheme to apply to the sale of the Property? Yes

If Yes, Clause 11.6 (Margin Scheme) applies.

Otherwise Clause 11.6 (Margin Scheme) does not apply.

The Seller must not apply the Margin Scheme to the Supply of the Property if Clause 11.6 does not apply.

← **WARNING:** If the Yes box is marked, do not complete items GST1 and GST3.

**GST3 INCLUSIVE OR EXCLUSIVE PURCHASE PRICE:**

Does the Purchase Price include GST?

Mark 1 box only

Yes

If Yes, Clause 11.4 (Purchase Price Includes GST) applies.

No

If No, Clause 11.5 (Purchase Price Does Not Include GST) applies.

← **WARNING:** (Do not complete item GST3 if the item GST1 (Going Concern) or item GST2 (Margin Scheme) are marked Yes.)

If neither box is marked or both boxes are marked, Clause 11.4 (Purchase Price Includes GST) applies.

**GST WITHHOLDING OBLIGATIONS**

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?

(select whichever is applicable)

Yes

No

← **WARNING:** the Buyer warrants in clause 2.4(6) that this information is true and correct.

[Note: An example of an acquisition for a creditable purpose would be the purchase of the Land by a building contractor, who is registered for GST, for the purposes of building a house on the Land and selling it in the ordinary course of its business.]

**LEASE SCHEDULE\***

\* Attach further Schedule if insufficient space

**WARNING:**

The Seller warrants in clauses 10.2 and 10.3 that the Lease Schedule is accurate at the Contract Date. Lease Incentives must include all incentives given to the Tenant, even if they have been received (see clause 10.3(6)).

**LEASE 1:**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location / Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx.): \_\_\_\_\_

Current Rent per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Term: \_\_\_\_\_

Remaining Option/s: Option 1 Term: \_\_\_\_\_ years

Option 2 Term: \_\_\_\_\_ years

Option 3 Term: \_\_\_\_\_ years

Tenant Carpark: No.: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ per  annum  month

Lease Documents: \_\_\_\_\_

Lease Incentives: \_\_\_\_\_

**LEASE 2:**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location / Tenancy No: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx.): \_\_\_\_\_

Current Rent per Annum: \$ \_\_\_\_\_  inclusive of outgoings  exclusive of outgoings

Current Commencement Date: \_\_\_\_\_

Current Term: \_\_\_\_\_

Remaining Option/s: Option 1 Term: \_\_\_\_\_ years

Option 2 Term: \_\_\_\_\_ years

Option 3 Term: \_\_\_\_\_ years

Tenant Carpark: No.: \_\_\_\_\_ Rate: \$ \_\_\_\_\_ per  annum  month

Lease Documents: \_\_\_\_\_

Lease Incentives: \_\_\_\_\_

**SERVICE AGREEMENT SCHEDULE\***

\* Attach further Schedule if insufficient space

**CONTRACT 1:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 2:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 3:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 4:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_ per  annum  quarter  month

**CONTRACT 5:**

Contractor: \_\_\_\_\_

Service Performed: \_\_\_\_\_

Cost: \$ \_\_\_\_\_ per  annum  quarter  month



**SPECIAL CONDITIONS**

See Annexure A: Special Conditions

DRAFT

**SETTLEMENT**

**Settlement Date:** See Special Conditions

← or any later date for settlement in accordance with clauses 6.2, 6.3, 12.5, 13.4 or any other provision of this Contract.

**WARNING:** The Settlement Date as stated may change. Read clauses 6.2, 6.3, 12.5 and 13.4. If you require settlement on a particular date, seek legal advice prior to signing.

**Place for Settlement:** Home Hill / Townsville / PEXA

← If Brisbane is inserted or this is not completed, this is a reference to Brisbane CBD.

**SIGNATURES:**

**Buyer:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

**Buyer:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

By placing my signature above, I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

(Note: No witness is required if the Buyer signs using an Electronic Signature)

**Seller:** \_\_\_\_\_

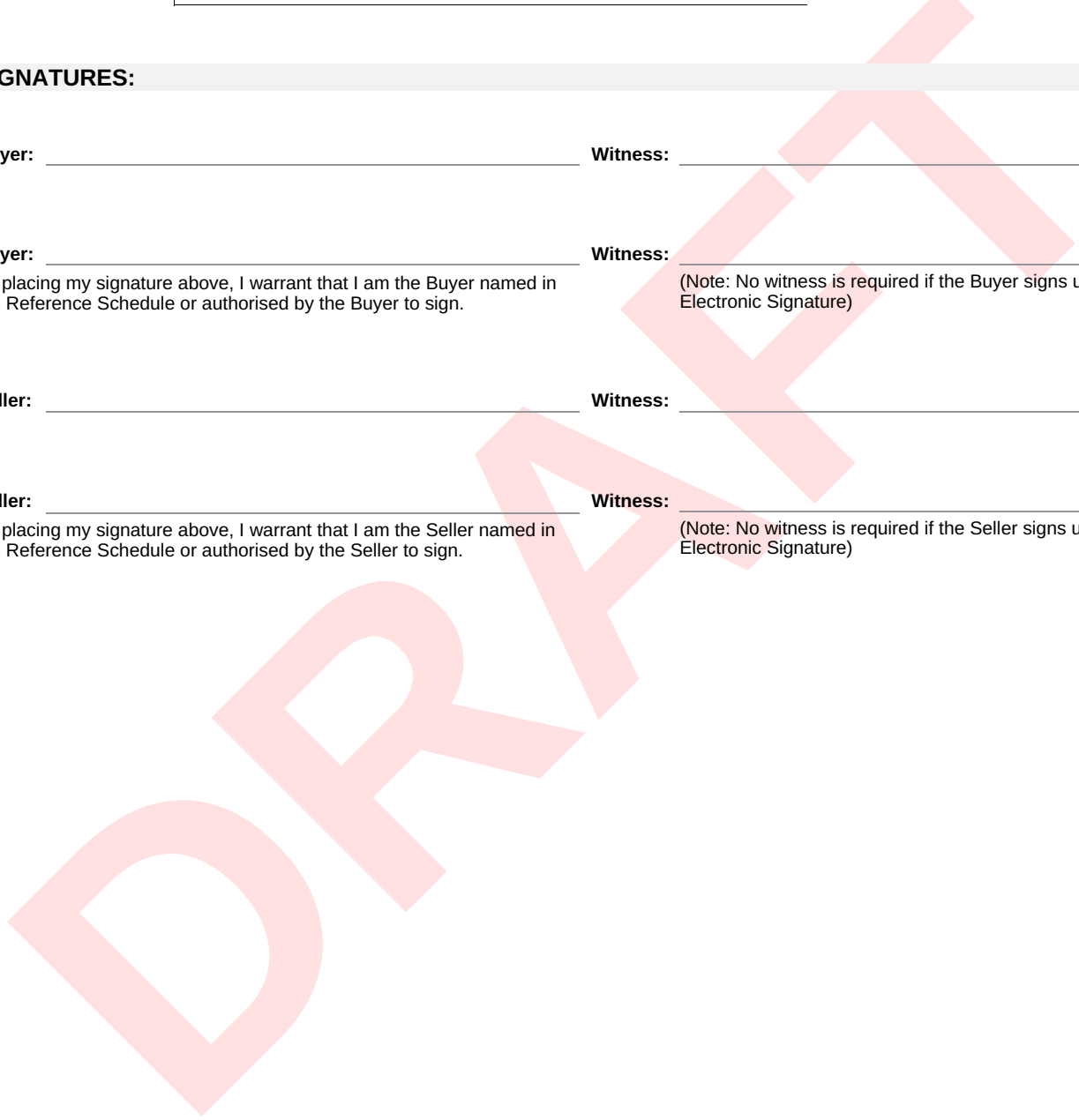
**Witness:** \_\_\_\_\_

**Seller:** \_\_\_\_\_

**Witness:** \_\_\_\_\_

By placing my signature above, I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

(Note: No witness is required if the Seller signs using an Electronic Signature)



# TERMS OF CONTRACT FOR COMMERCIAL LAND AND BUILDINGS

## 1. DEFINITIONS

1.1 In this contract, terms in **bold** in the Reference Schedule have the meanings shown opposite them and unless the context otherwise requires:

- (a) **"ATO"** means the Australian Taxation Office;
- (b) **"ATO Clearance Certificate"** means a certificate issued under section 14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
- (c) **"Balance Purchase Price"** means the Purchase Price, less the Deposit paid by the Buyer;
- (d) **"Bank"** means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* (Cth);
- (e) **"Bank Guarantee"** means each bank guarantee or deposit bond held by or on behalf of the Seller which has been provided on behalf of a Tenant to secure that Tenant's obligations under its Lease;
- (f) **"Building Inspector"** means a person licensed to carry out completed commercial building inspections under the *Queensland Building and Construction Commission Regulation 2018*;
- (g) **"Business Day"** means a day other than:
  - (i) a Saturday or Sunday;
  - (ii) a public holiday in the Place for Settlement; and
  - (iii) a day in the period 27 to 31 December (inclusive);
- (h) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235;
- (i) **"Contract Date"** or **"Date of Contract"** means:
  - (i) the date inserted in the Reference Schedule as the Contract Date; or
  - if no date is inserted, the date on which the last party signs this contract;
- (j) **"Contractor"** means any party performing services under a Service Agreement;
- (k) **"Court"** includes any tribunal established under statute;
- (l) **"Digitally Sign"** and **"Digital Signature"** have the meaning in the ECNL;
- (m) **"ECNL"** means the Electronic Conveyancing National Law (Queensland);
- (n) **"Electronic Conveyancing Documents"** has the meaning in the *Land Title Act 1994*;
- (o) **"Electronic Lodgement"** means lodgement of a document in the Land Registry in accordance with the ECNL;
- (p) **"Electronic Settlement"** means settlement facilitated by an ELNO System;
- (q) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
- (r) **"Electronic Workspace"** means a shared electronic workspace within the ELNO System nominated by the Seller that allows the Buyer and Seller to effect Electronic Lodgement and Financial Settlement;
- (s) **"ELNO"** has the meaning in the ECNL;
- (t) **"ELNO System"** means a system provided by an ELNO capable of facilitating Financial Settlement and Electronic Lodgement in Queensland;
- (u) **"Encumbrances"** includes:
  - (i) unregistered encumbrances;
  - (ii) statutory encumbrances; and
  - (iii) Security Interests;
- (v) **"Essential Term"** includes, in the case of breach by:
  - (i) the Buyer: clauses 2.1, 2.4(1), 2.4(5), 5.1 and 6.1; and
  - (ii) the Seller: clauses 2.4(5), 5.1, 5.3(1)(a)-(g), 5.7 and 6.1;but nothing in this definition precludes a Court from finding other terms to be essential;
- (w) **"Extension Notice"** means a notice under clause 6.2(1);
- (x) **"Financial Institution"** means a Bank, Building Society or Credit Union;
- (y) **"Financial Settlement"** means the exchange of value between Financial Institutions facilitated by an ELNO System in accordance with the Financial Settlement Schedule;
- (z) **"Financial Settlement Schedule"** means the electronic settlement schedule within the Electronic Workspace listing the source accounts and destination accounts;
- (aa) **"GST"** means the goods and services tax under the GST Act;
- (bb) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and includes other GST related legislation;
- (cc) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation;
- (dd) **"Improvements"** means all fixed structures on the Land (such as fixed plant and equipment, carpets, curtains, blinds and their fittings and in-ground plants) and includes all items fixed to them but does not include the Reserved Items or any fixtures and fittings which a Tenant is entitled to remove.
- (ee) **"ITAA"** means the *Income Tax Assessment Act 1936* ("1936 Act") and the *Income Tax Assessment Act 1997* ("1997 Act"), or if a specific provision is referred to, the Act which contains the provision; however if a specific provision of the 1936 Act is referred to which has been replaced by a provision of the 1997 Act, the reference must be taken to be the replacement provision;
- (ff) **"Keys"** means keys, codes or devices in the Seller's possession or control for all locks or security systems on the Property or necessary to access the Property;
- (gg) **"Leases"** means the leases, licences or other rights of occupancy of the Land:
  - (i) referred to in the Lease Schedule; or
  - (ii) granted by the Seller with the Buyer's consent under clause 10.6;
- (hh) **"Lease Documents"** means all agreements, deeds of covenant and other documents (including Lease Guarantees) relating to the Leases;

- (ii) "**Lease Guarantees**" means each guarantee or indemnity given in relation to a Lease. It includes a Security Deposit, Bank Guarantee or personal or corporate guarantee.
- (jj) "**Outgoings**" means rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies and land tax) and other outgoings with respect to the Property (but excluding insurance premiums);
- (kk) "**Pest Inspector**" means a person licensed to undertake termite inspections on completed buildings under the *Queensland Building and Construction Commission Regulation 2018*;
- (ll) "**PPSR**" means the Personal Property Securities Register established under *Personal Property Securities Act 2009* (Cth);
- (mm) "**Property**" means:
  - (i) the Land;
  - (ii) the Improvements; and
  - (iii) the Included Chattels;
- (nn) "**Proposed Dealing**" has the meaning in clause 10.6(1);
- (oo) "**Rent**" means any periodic amount, including outgoings, payable under the Leases;
- (pp) "**Reserved Items**" means the Excluded Fixtures and all chattels on the Land other than the Included Chattels and Tenant's fixtures and fittings;
- (qq) "**Security Deposits**" means cash amounts held by or on behalf of the Seller to secure a Tenant's obligations under a Lease;
- (rr) "**Security Interests**" means all security interests registered on the PPSR over Included Chattels and Improvements;
- (ss) "**Service Agreement**" means any agreement between the Seller and another party in connection with services performed for the benefit of the Property and set out in the Service Agreement Schedule;
- (tt) "**Services**" means infrastructure for the provision of services including water, gas, electricity, telecommunications, sewerage or drainage;
- (uu) "**Site Value**" means:
  - (i) in the case of non-rural land, site value under the *Land Valuation Act 2010* or
  - (ii) in the case of rural land, the unimproved value of the land under the *Land Valuation Act 2010*.
- (ww) "**Tenant**" means a Tenant under a Lease;
- (ww) "**Transfer Documents**" means:
  - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and
  - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer;
- (xx) "**Transport Infrastructure**" has the meaning defined in the *Transport Infrastructure Act 1994*; and
- (yy) "**Withholding Law**" means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

## 2. PURCHASE PRICE

### 2.1 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.

- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) Subject to clause 2.1(4), if the Buyer:
  - (a) effects an electronic transaction to pay all or part of the Deposit to the account of Deposit Holder on a day;
  - (b) provides written evidence to the Deposit Holder that the electronic transaction has occurred; and
  - (c) does not take any action to defer the payment to the Deposit Holder to a later day,
 the payment is taken to be received by the Deposit Holder on the day the Buyer effects the electronic transaction even if, because of circumstances beyond the Buyer's control, the payment to the Deposit Holder's account happens on a later day.
- (4) If the buyer has complied with clause 2.1(3) but the Deposit Holder has not received the payment by the due date:
  - (a) the Seller may give the Buyer notice that the payment has not been received by the Deposit Holder; and
  - (b) if the payment has not been paid into the account of the Deposit Holder by 5pm on the date 2 Business Days after the Seller's notice under clause 2.1(4)(a) is given to the Buyer then clause 2.1(3) will not apply and the Buyer will be in default.
- (5) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

### 2.2 Investment of Deposit

- (1) If:
  - (a) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (b) it is lawful to do so;
 the Deposit Holder must:
  - (c) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (d) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).
- (2) If there is income from the investment of the Deposit in respect of any financial year to which no beneficiary is presently entitled for the purpose of Division 6 of Part 111 of ITAA as at 30 June of that financial year:
  - (a) the parties must pay to the Deposit Holder the tax assessed to it in respect of that income (other than tax in the nature of a penalty for late lodgement ("Penalty") which the Deposit Holder must bear itself) and all expenses of the Deposit Holder in connection with the preparation and lodgement of the tax return, payment of the tax, and furnishing to the parties the information and copy documents they reasonably require;
  - (b) if the tax (other than Penalty) and the Deposit Holder's expenses are not paid to the Deposit Holder on demand, it may deduct them from the Deposit and income;
  - (c) if tax is not assessed on the income when the Deposit and income are due to be paid to the party entitled, the Deposit Holder may deduct and retain its estimate of the assessment; and
  - (d) as between the parties, the tax must be paid by the party receiving the income on which the tax is assessed and the Deposit Holder's expenses.

### 2.3 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

### 2.4 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by bank cheque as the Seller or the Seller's Solicitor directs.
- (2) Despite any other provision of this contract, a reference to a "bank cheque" in clause 2.4(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;and the Seller is not obliged to accept a cheque referred to in clause 2.4(2)(b) on the Settlement Date.
- (3) If both the following apply:
  - (a) the sale is not an excluded transaction under section 14-215 of the Withholding Law; and
  - (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
    - (i) an ATO Clearance Certificate; or
    - (ii) a variation notice under section 14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,then:
  - (c) for clause 2.4(1), the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
  - (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
  - (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
  - (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.
- (4) For clause 2.4(3) and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:
  - (a) the Property includes items in addition to the Land and Improvements; and

- (b) no later than 2 Business Days before the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer, in which case the market value of the Land and Improvements will be as stated in the valuation.
- (5) If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:
  - (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
  - (b) prior to settlement the Buyer must lodge with the ATO:
    - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
    - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
  - (c) on or before settlement, the Buyer must give the Seller copies of:
    - (i) the Form 1;
    - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
    - (iii) confirmation from the ATO that the Form 2 has been lodged; and
    - (iv) a completed ATO payment slip for the Withholding Amount.
  - (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
  - (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.
- (6) The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

### 2.5 Adjustments

- (1) Rent and Outgoings must be apportioned between the parties in accordance with this clause 2.5 and any adjustments paid and received on settlement so that:
  - (a) the Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date; and
  - (b) the Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.
- (2) Subject to clauses 2.5(3), 2.5(4), 2.5(6) and 2.5(15), Outgoings for periods including the Settlement Date must be adjusted:
  - (a) for those paid, on the amount paid;
  - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
  - (c) for those not assessed:
    - (i) on the amount the relevant authority advises will be assessed (excluding any discount); or
    - (ii) if no advice on the assessment to be made is available, on the amount of the latest separate assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:

- (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - (b) if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) Land tax must be adjusted:
- (a) on the assessment that the Queensland Revenue Office would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; and
  - (b) if there is no separate Site Value for the Land, on a notional Site Value equal to:

$$\text{Site Value of the parcel} \times \frac{\text{Area of the Land}}{\text{Area of the parcel}}$$

- (5) If land tax is unpaid at the Settlement Date and the Queensland Revenue Office advises that it will issue a final clearance for the Land on payment of a specified amount, then the Seller irrevocably directs the Buyer to draw a bank cheque for the specified amount from the Balance Purchase Price at settlement and the Buyer must pay it promptly to the Queensland Revenue Office. If an amount is paid under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 2.5(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Seller irrevocably directs the Buyer to draw a bank cheque for the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.5(2).
- (8) Rent for any rental period ending on or before the Settlement Date belong to the Seller and is not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("**Current Period**") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.
- (11) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.5(8), 2.5(9) and 2.5(10).
- (12) Payments under clause 2.5(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The cost of Bank cheques payable at settlement:
  - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
  - (b) to parties other than the Seller or its mortgagee are the responsibility of the Seller and the Seller will reimburse this cost to the Buyer as an adjustment at settlement.

- (14) The Seller is not entitled to require payment of the Balance Purchase Price by means other than Bank cheque without the consent of the Buyer.
- (15) Upon written request by the Buyer, the Seller will, before settlement, give the Buyer a written statement, supported by reasonable evidence, of:
  - (a) all Outgoings and all Rent for the Property to the extent they are not capable of discovery by search or enquiry at any office of public record or pursuant to the provisions of any statute; and
  - (b) any other information which the Buyer may reasonably require for the purpose of calculating or apportioning any Outgoings or Rent under this clause 2.5.

If the Seller becomes aware of a change to the information provided the Seller will as soon as practicably provide the updated information to the Buyer.

### 3. FINANCE

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
  - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or
  - (2) the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 3.2.

### 4. BUILDING AND PEST INSPECTION REPORTS

- 4.1 This contract is conditional upon the Buyer obtaining a written building report from a Building Inspector and a written pest report from a Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer must give notice to the Seller that:
  - (1) a satisfactory Inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
  - (2) clause 4.1 has been either satisfied or waived by the Buyer.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waive pursuant to clause 4.2.

## 5. SETTLEMENT

### 5.1 Time and Date

- (1) Settlement must occur:
  - (a) between 9am and 4pm AEST on the Settlement Date; and
  - (b) subject to clause 5.1(2), in the Place for Settlement at the office of a solicitor, Financial Institution or settlement agent nominated by the Seller.
- (2) If the Seller has not nominated an office under clause 5.1(1)(b) or the parties have not otherwise agreed where settlement is to occur by 5pm on the date 2 Business Days before the Settlement Date, section 61(2)(c) of the *Property Law Act 1974* applies.

### 5.2 Transfer Documents

- (1) The Transfer Documents must be prepared by the Buyer and delivered to the Seller a reasonable time before the Settlement Date.
- (2) If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Queensland Revenue Office nearest the Place for Settlement for stamping before settlement.

### 5.3 Documents and Keys at Settlement

- (1) In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:
  - (a) unstamped Transfer Documents capable of immediate registration after stamping;
  - (b) any instrument necessary to release any Encumbrance over the Property in compliance with the Seller's obligation in clause 7.2;
  - (c) if requested by the Buyer not less than 2 clear Business Days before the Settlement Date, the Keys;
  - (d) if there are Leases or Service Agreements:
    - (i) the Seller's copy of all Lease Documents and Service Agreements;
    - (ii) a notice to each Tenant and Contractor advising of the sale and assignment of rights under this contract in the form required by law (if applicable); and
    - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Lease Guarantee assigned to the Buyer under this contract;
  - (e) a copy of the certificate of occupancy pursuant to the *Building Act 1975* appropriate to the use of the Property (if the Improvements may not be lawfully occupied unless the certificate has issued);
  - (f) all plans and drawings relating to the construction of the Improvements on the Land in the possession or control of the Seller; and
  - (g) all documents in the possession and control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare income tax returns.
- (2) If the Keys are not required to be delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer on or before settlement. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the Tenants under the Leases;
- (2) Lease Guarantees;
- (3) the Seller's rights under the Service Agreements;
- (4) manufacturers' warranties regarding the Included Chattels;
- (5) builders' warranties on the Improvements, to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

### 5.5 Lease Guarantees

On settlement, the Seller will:

- (1) allow as a deduction from the Balance Purchase Price any Security Deposit received by the Seller from any Tenant and retained by the Seller;
- (2) transfer control to the Buyer over any trust account or fund held on trust for Tenants as Security Deposit; and
- (3) assign to the Buyer, Bank Guarantees held in respect of any Tenant. If any Bank Guarantee is not assignable, the Seller will enforce the Bank Guarantee at the written direction and expense of the Buyer for the Buyer's benefit.

### 5.6 Indemnity

The Buyer indemnifies the Seller in respect of claims by Tenants for the return of Bank Guarantees or Security Deposits which are dealt with under clause 5.5.

### 5.7 Possession of Property and Title to Included Chattels

- (1) On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Leases.
- (2) Title to the Included Chattels passes at settlement.

### 5.8 Reservations

- (1) The Seller must remove the Reserved Items from the Property before settlement.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.8(2) or 5.8(3).

### 5.9 Consent to Transfer of State Lease

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

## 6. TIME

### 6.1 Time of the Essence

Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 6.2 Extension of Settlement Date

- (1) Either party may, at any time up to 4pm on the Settlement Date, extend the Settlement Date by giving a notice under this clause nominating a new date for settlement which must be no later than 5 Business Days after the Scheduled Settlement Date.

- (2) The Settlement Date will be the date specified in the Extension Notice and time is of the essence in respect of this date.
- (3) More than one Extension Notice may be given under clause 6.2(1) but the new date for settlement nominated in an Extension Notice may not be a date later than 5 Business Days after the Scheduled Settlement Date.
- (4) In this clause 6.2, "**Scheduled Settlement Date**" means the Settlement Date specified in the Reference Schedule as extended:
  - (a) by agreement of the parties; or
  - (b) under clause 6.3 or 13.4, but excludes any extension of the Settlement Date as a result of the operation of this clause 6.2.

### 6.3 Suspension of Time

- (1) This clause 6.3 applies if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:
  - (a) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
  - (b) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.
- (2) Time for the performance of the parties' settlement obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.
- (3) An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.
- (4) When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.
- (5) When the Suspension Period ends, whether notice under clause 6.3(4) has been given or not, either party may give the other party a Notice to Settle.
- (6) A Notice to Settle must be in writing and state:
  - (a) that the Suspension Period has ended; and
  - (b) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
  - (c) that time is of the essence.
- (7) When Notice to Settle is given, time is again of the essence of the contract.
- (8) In this clause 6.3:
  - (a) "**Affected Party**" means a party referred to in clause 6.3(1);
  - (b) "**Delay Event**" means:
    - (i) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
    - (ii) riot, civil commotion, war, invasion or a terrorist act;
    - (iii) an imminent threat of an event in paragraphs (i) or (ii);
    - (iv) compliance with any lawful direction or order by a Government Agency; or
    - (v) if clause 2.4(5) applies, the computer system operated by the ATO for the GST Withholding notifications referred to in clause 2.4(5)(c) is inoperative;

- (c) "**Government Agency**" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals;
- (d) "**Settlement Obligations**" means, in the case of the Buyer, its obligations under clauses 2.4(1), 2.4(5)(b) and (c) and 5.1(1) and, in the case of the Seller, its obligations under clauses 5.1(1), 5.3(1)(a) – (g) and 5.7;
- (e) "**Suspension Period**" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## 7. MATTERS AFFECTING THE PROPERTY

### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Leases.

### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

### 7.4 Seller's Warranties

- (1) The Seller's warranties in clauses 7.4(2) and 7.4(3) apply except to the extent disclosed by the Seller to the Buyer:
  - (a) in this contract; or
  - (b) in writing before the Buyer signed this contract.
- (2) The Seller warrants that, at the Contract Date:
  - (a) there is no outstanding notice under section 246AG, 247 or 248 of the *Building Act 1975* or section 167 or 168 of the *Planning Act 2016* that affects the Property;
  - (b) the Seller has not received any communication from a competent authority that may lead to the issue of a notice referred to in clause 7.4(2)(a) or a notice or order referred to in clause 7.6(1);
  - (c) there are no current or threatened claims or proceedings which may lead to a Court order or writ of execution affecting the Property;
  - (d) there is no outstanding obligation on the Seller to give notice to the administering authority under the *Environmental Protection Act 1994* of a notifiable activity being conducted on the Land; and
  - (e) the Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of the *Environmental Protection Act 1994*.
- (3) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied Court order or writ of execution affecting the Property.



- (4) If the Seller breaches a warranty in clause 7.4(2) or 7.4(3), the Buyer may terminate this contract by notice to the Seller given before settlement.
- (5) The Seller does not warrant that the Present Use is lawful.

### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If:
  - (a) there is an error in the boundaries or area of the Land;
  - (b) there is an encroachment by structures onto or from the Land; or
  - (c) there are Services that pass through the Land which do not service the Land and are not protected by any Encumbrance disclosed to the Buyer in this contract; or
  - (d) there is a mistake or omission in describing the Property or the Seller's title to it,
 which is material, the Buyer may terminate this contract by notice to the Seller given before settlement.
- (3) If a matter referred to in clause 7.5(2) is:
  - (a) immaterial; or
  - (b) material, but the Buyer elects to complete this contract,
 the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.
- (4) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(3).

### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or Court requiring work to be done or money spent in relation to the Property must be fully complied with:
  - (a) if issued before the Contract Date: by the Seller before the Settlement Date unless clause 7.6(4) applies; or
  - (b) if issued on or after the Contract Date: by the Buyer unless clause 7.6(3) applies.
- (2) If the Seller fails to comply with clause 7.6(1)(a), the Buyer is entitled to claim the reasonable cost of complying with the notice or order from the Seller after settlement as a debt.
- (3) If any notice or order referred to in clause 7.6(1)(b) is required to be complied with before the Settlement Date:
  - (a) the Seller must comply with the notice or order; and
  - (b) at settlement, the Buyer must pay the reasonable costs incurred by the Seller in doing so,
 unless the Buyer directs the Seller not to and indemnifies the Seller against any liability incurred for failure to comply with the notice or order.
- (4) The Buyer must comply with any notice or order referred to in clause 7.6(1) which is disclosed by the Seller to the Buyer:
  - (a) in this contract; or
  - (b) in writing before the Buyer signed this contract.

### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
  - (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access to the Land passes unlawfully through other land;

- (d) any Services to the Land which pass through other land are not protected by a registered easement, building management statement or by statutory authority;
  - (e) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (f) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or omission in the Seller's title under clause 7.5(2)(d);
  - (g) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (h) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (i) there is a charge against the Land under section 104 of the *Foreign Acquisitions and Takeovers Act 1975* (Cth),
- and that has not been disclosed in this contract or disclosed by the Seller to the Buyer in writing before the Buyer signed this contract, the Buyer may terminate this contract by notice to the Seller given before settlement.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
  - (3) The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

### 7.8 Dividing Fences

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 8. RIGHTS AND OBLIGATIONS UNTIL SETTLEMENT

### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement;
- (4) once to value the Property before settlement; and
- (5) once to carry out an inspection for smoke alarms installed in the Property.

### 8.3 Seller's Obligations After Contract Date

- (1) The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property, the Leases or the Service Agreements that may significantly alter them or result in later expense for the Buyer.
- (2) The Seller must promptly upon receiving any notice, proceeding or order that affects the Property or requires work or expenditure on the Property, give a copy to the Buyer.
- (3) Without limiting clause 8.3(1), the Seller must not without the prior written consent of the Buyer, give any notice or seek or consent to any order that affects the Property or make any agreement affecting the Property that binds the Buyer.

#### 8.4 Information Regarding the Property

Upon written request of the Buyer but in any event before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Leases and Service Agreements to allow the Buyer to properly manage the Property after settlement;
- (3) sufficient details (including the date of birth of each Seller who is an individual) to enable the Buyer to undertake a search of the PPSR;
- (4) the Local Government rate account number for the Land; and
- (5) further copies or details if those previously given cease to be complete and accurate.

#### 8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of Landlord and Tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

### 9. PARTIES' DEFAULT

#### 9.1 Seller and Buyer May Affirm or Terminate

- (1) If the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) may affirm or terminate this contract under this clause.
- (2) Clause 9.1 does not limit any other right or remedy of the parties including those under this Contract or any right at law or in equity.

#### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

#### 9.3 If Buyer Affirms

If the Buyer affirms this contract under clause 9.1, it may sue the Seller for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

#### 9.4 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

#### 9.5 If Buyer Terminates

If the Buyer terminates this contract under clause 9.1, it may do all or any of the following:

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

#### 9.6 Seller's Resale

- (1) If the Seller terminates this contract and resells the Property, the Seller may recover from the Buyer as liquidated damages:

- (a) any deficiency in price on a resale; and
- (b) its expenses connected with any repossession, any failed attempt to resell, and the resale, provided the resale settles within 2 years of termination of this contract.

- (2) Any profit on a resale belongs to the Seller.

#### 9.7 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

#### 9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

#### 9.9 Interest on Late Payments

- (1) The Buyer must pay interest at the Default Rate:
  - (a) on any amount payable under this contract which is not paid when due; and
  - (b) on any judgement for money payable under this contract.
- (2) Interest continues to accrue:
  - (a) under clause 9.9(1)(a), from the date it is due until paid; and
  - (b) under clause 9.9(1)(b), from the date of judgement until paid.
- (3) Any amount payable under clause 9.9(1)(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.
- (4) Nothing in this clause affects any other rights of the Seller under this contract or at law.

### 10. LEASES AND SERVICE AGREEMENTS

#### 10.1 Seller's Statement

- (1) Within a reasonable time after written request by the Buyer, the Seller must give the Buyer:
  - (a) a statement of Outgoings which cannot be discovered by search; and
  - (b) a notice under section 262A(4AH) of ITAA (if applicable to the Property).
- (2) The Seller must update the statement if the Seller becomes aware that it has become inaccurate in a material respect.
- (3) The Seller warrants that the statement and notice will be accurate at the Settlement Date.

#### 10.2 Leases and Service Agreements

The Seller states that details of all Leases and Service Agreements affecting the Property are disclosed in the Lease Schedule and Service Agreement Schedule respectively.

#### 10.3 Lease Warranties

The Seller warrants that, except as disclosed in this contract, the following are correct at the Contract Date:

- (1) details of the Leases set out in the Lease Schedule;
- (2) each of the Leases are valid and subsisting;
- (3) there is no subsisting breach of a provision of any Lease;
- (4) there is no notice or correspondence between the Seller and any Tenant relating to Rent review or the exercise of an option for renewal;
- (5) for each Lease, the relevant Lease Documents provided to the Buyer under clause 10.5(1) constitute the entire agreement between the Seller and each Tenant and there is no written, oral or other agreement between the Seller and any Tenant varying the terms of a Lease or granting any additional option for renewal of the term of any Lease;

- (6) no Tenant received any incentive or inducement to enter into its initial or current Lease;
- (7) there is no pending litigation or arbitration between the Seller and any Tenant arising out of any of the Leases; and
- (8) if any Lease is a retail shop lease within the meaning of the *Retail Shop Leases Act 1994*:
  - (a) as far as the Seller is aware the Seller has complied with the *Retail Shop Leases Act 1994* in relation to the Lease;
  - (b) there is no existing or renewed retail tenancy dispute in relation to a Lease;
  - (c) there are no mediation agreements, proceedings or orders in existence under the *Retail Shop Leases Act 1994* in respect of a Lease;
  - (d) no Tenant has notified the Seller requesting a right to renew any Lease for a further period; and
  - (e) no Tenant has made a claim against the Seller for compensation for loss or damage suffered by the Tenant under sections 43, 46G or 46K of the *Retail Shop Leases Act 1994* and there are no circumstances existing to the Seller's knowledge which might give rise to a claim for compensation.

#### 10.4 Inaccuracies

The Buyer may terminate this contract by notice in writing to the Seller if a warranty contained in clause 10.3 is inaccurate and the Buyer is materially prejudiced by that inaccuracy.

#### 10.5 Buyer's Satisfaction with Documents

- (1) The Seller must produce to the Buyer's Solicitor within 7 days after the Contract Date:
  - (a) copies of all Lease Documents and Service Agreements; and
  - (b) a statement of the Rent and arrears of Rent for each Lease (current at the Contract Date).
- (2) If the Seller does not comply with clause 10.5(1), the Buyer may terminate this contract by notice to the Seller given no later than 14 days after the Contract Date.
- (3) If the Buyer is not satisfied with the terms of the Lease Documents or Service Agreements or with the statement delivered under clause 10.5(1), it may terminate this contract by notice to the Seller given no later than 7 days after the Buyer's receipt of the last of the items delivered under clause 10.5(1).
- (4) If the Buyer does not terminate the contract under clause 10.5(2) or 10.5(3), the Buyer will be treated as having accepted the Leases and Service Agreement.

#### 10.6 Dealings with Leases

- (1) Subject to this clause 10.6, the Seller must not, after the Contract Date:
  - (a) deal with the Property or any of the Leases;
  - (b) accept a surrender of any Lease;
  - (c) consent to a transfer of any Lease;
  - (d) terminate any Lease;
  - (e) forfeit, call on or enforce any Lease Guarantee;
  - (f) release any party from a Lease Guarantee;
  - (g) consent to any request by a Tenant;
  - (h) grant or agree to grant a new lease, licence or other right of occupancy of any part of the Land or an extension of a Lease other than where a Tenant validly exercises an option in a Lease; or
  - (i) initiate or negotiate a Rent review or otherwise agree to vary the Rent payable under a Lease (each a "**Proposed Dealing**") without the Buyer's consent, unless the failure to do so would amount to a breach of the Lease by the Seller.

- (2) Despite clause 10.6(1)(i), the Seller:
  - (a) may implement a review of Rent in accordance with a calculation stated in the Lease (for example a fixed increase, specified percentage increase, a review on the basis of an independently published index of prices, costs or wages or a combination of them); and
  - (b) may initiate and conduct a market review of the Rent if failure to do so by the Settlement Date would result in a waiver or prejudice of the right to conduct the Review. However the Seller may not propose or agree to the new Rent without the Buyer's consent (which must not be unreasonably withheld or delayed).
- (3) The Seller must give the Buyer full details (including copies of all written material received from the Tenant or proposed Tenant) of each Proposed Dealing before entering into or consenting to the Proposed Dealing.
- (4) The Buyer must:
  - (a) co-operate with the Seller and promptly notify the Seller whether it consents to a Proposed Dealing; and
  - (b) not withhold its consent to a Proposed Dealing except on reasonable grounds (or subject to reasonable conditions) which must be notified in writing to the Seller.
- (5) If any Tenant defaults in the payment of Rent, the Seller must promptly inform the Buyer in writing. The Buyer may require the Seller to do either or both of the following actions at the Seller's expense:
  - (a) serve on the Tenant a notice of breach of covenant if required by law;
  - (b) if the seller is legally entitled to do so, terminate the Lease by physical re-entry (subject to the provisions of the Lease).
- (6) The Seller must give the Buyer copies of any documents relating to the Leases that come into the control or possession of the Seller between the Contract Date and settlement.

#### 10.7 Service Agreements

- (1) The Seller:
  - (a) may terminate any Service Agreement which is not capable of assignment (subject to the provisions of the relevant Service Agreement); and
  - (b) indemnifies the Buyer against claims under the Service Agreements prior to the Settlement Date.
- (2) The Buyer:
  - (a) assumes the obligations of the Seller under those Service Agreements which are assigned until their termination; and
  - (b) indemnifies the Seller against claims under Service Agreements after the Settlement Date.
- (3) If:
  - (a) the Seller cannot terminate a Service Agreement; or
  - (b) the Seller's rights under a Service Agreement cannot be assigned or are not effectively assigned to the Buyer;
 the Seller must enforce that Service Agreement at the direction of the Buyer for the Buyer's benefit.

### 11. GOODS AND SERVICES TAX

#### 11.1 Definitions

Words and phrases defined in the GST Act have the same meaning in this contract unless the context indicates otherwise.

#### 11.2 GST Table

The GST Table and the notes in it are part of this clause 11.

### 11.3 Taxable Supply

This clause 11 applies where the transaction is:

- (1) a Taxable Supply; or
- (2) not a Taxable Supply because it is the Supply of a Going Concern.

### 11.4 Purchase Price Includes GST

If this clause 11.4 applies, the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

### 11.5 Purchase Price Does Not Include GST

If this clause 11.5 applies, the Purchase Price does not include the Seller's liability for GST on the Supply of the Property. The Buyer must on the Settlement Date pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the Supply of the Property.

### 11.6 Margin Scheme

**Warning:** The Seller is warranting that the Margin Scheme can apply. If in doubt about using the Margin Scheme you should seek professional advice.

If this clause 11.6 applies:

- (1) the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property;
- (2) the Seller:
  - (a) must apply the Margin Scheme to the Supply of the Property; and
  - (b) warrants that the Margin Scheme is able to be applied;
- (3) if the Seller breaches clause 11.6(2)(a) or its warranty under clause 11.6(2)(b) then:
  - (a) the Buyer may terminate this contract if it becomes aware of the breach prior to the Settlement Date.
  - (b) if the Buyer does not terminate this contract under clause 11.6(3)(a) or does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable for the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
  - (c) the Buyer is entitled to compensation from the Seller if there is a breach of clause 11.6(2).

### 11.7 If the Supply is a Going Concern

**Warning:** The parties are providing certain warranties under this clause. If there is doubt about whether there is a Supply of a Going Concern you should seek professional advice.

If this clause 11.7 applies:

- (1) the Purchase Price does not include any amount for GST;
- (2) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (3) the Seller warrants that:
  - (a) between the Contract Date and the Settlement Date the Seller will carry on the Enterprise; and
  - (b) the Property (together with any other things that must be provided by the Seller to the Buyer at the Settlement Date under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;
- (4) the Buyer warrants that at the Settlement Date it is registered or required to be Registered under the *GST Act*;

- (5) if either of the warranties in clause 11.7(3) is breached:

- (a) the Buyer may terminate this contract if it becomes aware of the breach prior to the Settlement Date;
  - (b) if the Buyer does not terminate this contract then, at the Settlement Date, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property;
  - (c) if the Buyer does not become aware of the breach until after the Settlement Date, it must pay to the Seller an amount equal to the Input Tax Credit which the Buyer will receive for GST payable in respect of the Supply of the Property. Payment must be made when the Buyer receives the benefit of the Input Tax Credit;
  - (d) the Buyer is entitled to compensation from the Seller if there is a breach of the warranty;
- (6) if the warranty in clause 11.7(4) is not correct the Buyer must pay to the Seller an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand;
  - (7) if for any reason other than a breach of a warranty by the Seller or the Buyer this transaction is not a Supply of a Going Concern, the Buyer must pay to the Seller the amount payable by the Seller as GST on the Supply of the Property. Payment must be made at the Settlement Date or, if settlement has occurred, immediately on demand.

### 11.8 Adjustments

Where this contract requires an adjustment or apportionment of Outgoings or Rent and profits of the Property, that adjustment or apportionment must be made on the amount of the Outgoing, Rent or profit exclusive of GST.

### 11.9 Tax Invoice

Where GST is payable on the Supply of the Property, the Seller must give to the Buyer a Tax Invoice at the Settlement Date or on any later date on which the Buyer is required to pay GST under clause 11.7.

### 11.10 No Merger

To avoid doubt, the clauses in this clause 11 do not merge on settlement.

### 11.11 Remedies

The remedies provided in clauses 11.6(3), 11.7(5) and 11.7(6) are in addition to any other remedies available to the aggrieved party.

## 12. GENERAL

### 12.1 Seller's Agent

The Seller's Agent is appointed as the Seller's agent to introduce a Buyer.

### 12.2 Foreign Buyer Approval

The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

### 12.3 Duty

The Buyer must pay all duty on this contract.

### 12.4 Notices

- (1) Notices under this contract must be in writing.
- (2) Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.

- (3) Notices under this contract or notices required to be given by law may be given by:
  - (a) delivering or posting to the other party or its solicitor; or
  - (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
  - (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).
- (4) Subject to clause 12.4(5), a notice given after this contract is entered into in accordance with clause 12.4(3) will be treated as given:
  - (a) 5 Business Days after posting;
  - (b) if sent by facsimile, at the time indicated on a clear transmission report; and
  - (c) if sent by email, at the time it is sent.
- (5) Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.
- (6) If two or more notices are treated as given at the same time under clause 12.4(5), they will be treated as given in the order in which they were sent or delivered.
- (7) Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.
- (8) For the purposes of clause 12.4(3)(c) and clause 14.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.
- (9) A communication given using a messaging system in an ELNO System is not a notice for the purpose of this contract.

### 12.5 Business Days

- (1) If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.
- (3) If clause 13 applies and the Settlement Date falls on a day on which both the Sydney and Melbourne offices of the Reserve Bank of Australia are closed, the Settlement Date will be taken to be the next Business Day.

### 12.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

### 12.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

### 12.8 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

### 12.9 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;

- (b) one gender includes each other gender;
- (c) a person includes a Body Corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

#### (6) Calculating Time

If anything is permitted or required to be done:

- (a) a number of days or Business Days before a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date;

Example: if the Settlement Date falls on a Friday, 2 days before the Settlement Date is Wednesday.

- (b) "at least" a number of days or Business Days before a specified date or a clear number of days or Business Days before a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date and excluding the day on which the thing may or must be done;

Example: if the Settlement Date falls on a Friday, at least 2 days before the Settlement Date or 2 clear days before the Settlement Date is Tuesday.

- (c) a number of days or Business Days after a specified date, the date by which that thing may or must be done is to be calculated excluding the specified date.

Example: if the Contract Date falls on a Monday, 2 days after the Contract Date is Wednesday.

### 12.10 Counterparts

- (1) This contract may be executed in two or more counterparts, all of which will together be deemed to constitute one and the same contract.
- (2) A counterpart may be electronic and signed using an Electronic Signature.

## 13. ELECTRONIC SETTLEMENT

### 13.1 Application of Clause

Clause 13:

- (a) applies if the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer is a required instrument to which section 5(1) of the *Land Title Regulation 2022* applies;
- (b) continues to apply even if section 5(2)(a)(ii) of the *Land Title Regulation 2022* applies; and
- (c) overrides any other provision of this contract to the extent of any inconsistency.

### 13.2 Nomination of ELNO System and Completion of Electronic Workspace

- (1) The Seller must nominate the ELNO System to be used for the Electronic Settlement. Despite clause 12.4(9), the Seller may nominate the ELNO System by sending or accepting an invitation to an Electronic Workspace in an ELNO System.

- (2) The parties must:
- (a) ensure that the Electronic Workspace is completed and all Electronic Conveyancing Documents and the Financial Settlement Schedule are Digitally Signed prior to settlement; and
  - (b) do everything else required in the Electronic Workspace or otherwise to enable settlement to occur on the Settlement Date.
- (3) If the parties cannot agree on a time for settlement, the time to be nominated in the Electronic Workspace is 4pm AEST.
- (4) If any part of the Purchase Price is to be paid to discharge an Outgoing:
- (a) the Buyer may, by notice in writing to the Seller, require that the amount is paid to the Buyer's Solicitor's trust account and the Buyer is responsible for paying the amount to the relevant authority;
  - (b) for amounts to be paid to destination accounts other than the Buyer's Solicitor's trust account, the Seller must give the Buyer a copy of the current account for the Outgoing to enable the Buyer to verify the destination account details in the Financial Settlement Schedule.
- (5) If the Deposit is required to discharge any Encumbrance or pay an Outgoing at settlement:
- (a) the Deposit Holder must, if directed by the Seller at least 2 Business Days before settlement, pay the Deposit (and any interest accrued on investment of the Deposit) less commission as clear funds to the Seller's Solicitor;
  - (b) the Buyer and the Seller authorise the Deposit Holder to make the payment in clause 13.2(5)(a);
  - (c) the Seller's Solicitor will hold the money as Deposit Holder under the Contract;
  - (d) the Seller and Buyer authorise the Seller's Solicitor to pay the money as directed by the Seller in accordance with the Financial Settlement Schedule.

### 13.3 Electronic Settlement

- (1) Clauses 5.1(1)(b), 5.1(2) and 5.2 do not apply.
- (2) Payment of the Balance Purchase Price electronically as directed by the Seller's Solicitor in the Financial Settlement Schedule satisfies the Buyer's obligation in clause 2.4(1).
- (3) The Seller and Buyer will be taken to have complied with:
  - (a) clause 2.4(3)(c), (e) and (f); and
  - (b) clause 2.4(5)(d) and (e),
 (as applicable) if at settlement the Financial Settlement Schedule specifies payment of the relevant amount to the account nominated by the Commissioner of Taxation.
- (4) The Seller will be taken to have complied with clause 5.3(1) if:
  - (a) in relation to documents which are suitable for Electronic Lodgement in the Land Registry at settlement, the documents are Digitally Signed within the Electronic Workspace; and
  - (b) in relation to any other document or thing, the Seller's Solicitor:
    - (i) confirms in writing prior to settlement that it holds all relevant documents which are not suitable for Electronic Lodgement and all Keys (if requested under clause 5.3(1)(c)) in escrow on the terms contained in the QLS E-Conveyancing Guidelines; and

- (ii) gives a written undertaking to send the documents and Keys (if applicable) to the Buyer or Buyer's Solicitor no later than the Business Day after settlement; and
  - (iii) if requested by the Buyer, provides copies of documents in the Seller's Solicitors possession.
- (5) A party is not in default to the extent it is prevented from complying with an obligation because the other party or the other party's Financial Institution has not done something in the Electronic Workspace.
- (6) Any rights under the contract or at law to terminate the contract may not be exercised during the time the Electronic Workspace is locked for Electronic Settlement.
- (7) Electronic Settlement is taken to occur when Financial Settlement is effected, whether or not Electronic Lodgement has occurred.

### 13.4 Computer System Unavailable

If settlement fails and cannot occur by 4pm AEST on the Settlement Date because a computer system operated by the Land Registry, Queensland Revenue Office, Reserve Bank, a Financial Institution or the relevant ELNO System is inoperative or unavailable, neither party is in default and the Settlement Date is deemed to be the next Business Day. Time remains of the essence.

### 13.5 Costs

Each party must pay its own fees and charges of using the relevant ELNO System for Electronic Settlement.

## 14. ELECTRONIC CONTRACT AND DISCLOSURE

### 14.1 Electronic Signing

If this contract is signed by any person using an Electronic Signature, the Buyer and the Seller:

- (a) agree to enter into this contract in electronic form; and
- (b) consent to either or both parties signing the contract using an Electronic Signature.

### 14.2 Pre-contract Disclosure

The Buyer consents to the Seller's use of electronic communication to give any notice or information required by law to be given to the Buyer and which was given before the Buyer signed this contract.

## Annexure A Special Conditions

### 1. DEFINITIONS AND INTERPRETATION

1.1 The following definitions are in addition to the definitions contained in clause 1.1 of the Standard Conditions:

- (a) **Annexure** means any annexures to this Contract;
- (b) **Authority** means any government agency or body either federal, state or local, or any provider of public utility services to, near or past the Property and/or Land and any other person, instrumentality or body having jurisdiction, rights, powers, duties or responsibilities over the Property and/or Land or the granting of approvals in respect of the Property and/or Land and includes the Burdekin Shire Council;
- (c) **Building Covenants** means the Design Guidelines and Building Covenants contained in **Annexure F**;
- (d) **Claim** includes any claim, cause of action, proceeding, right, entitlement, demand or liability however it arises and whether it is past, present or future, actual, potential or contingent;
- (e) **Contract** means this Contract of sale, including Annexure attached to it;
- (f) **Decision Notice** means the Decision Notice of the Burdekin Shire Council for the development of the Land, contained in **Annexure E**;
- (g) **Development** means the staged subdivision of Lot 1 on Registered Plan 733033 (and subsequent balance lots) to create initially up to 23 subdivided lots, including the Land specified in this Contract, which development may be approved to take place, and may take place, in multiple stages;
- (h) **Disclosure Plan** means the proposed survey plan, contained in **Annexure D**;
- (i) **Disclosure Statement** means the Disclosure Statement required under the LSA, contained in **Annexure C**;
- (j) **GST** means GST as defined in the GST Act or any replacement or other relevant legislation and regulation;
- (k) **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (l) **Guarantee and Indemnity** means the Guarantee and Indemnity in **Annexure B** of the Contract;
- (m) **LSA** means the *Land Sales Act 1984* (Qld)
- (n) **Object** means to object generally and includes to avoid or attempt to avoid this Contract, terminate this Contract, delay settlement or refuse to settle this Contract, claim for compensation or damages, or a reduction to or retention of any part of the Purchase Price, require the Seller to carry out any works to the Property and/or Land or requisition the Seller;

- (o) **Special Conditions** means these special conditions in **Annexure A** of the Contract;
  - (p) **Standard Conditions** means the printed Terms of Contract for Commercial Land and Buildings (Tenth Edition) adopted by the Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated; and
  - (q) **Survey Plan** means the plan of sub-division to create the Land.
- 1.2 Terms defined in clauses 1.1 of the Standard Conditions have the same meaning in these Special Conditions.
- 1.3 If there is any inconsistency between the Standard Conditions and the Special Conditions, the Special Conditions will prevail to the extent of any inconsistency.
- 1.4 If a provision of this Contract is void or unenforceable it must be severed from this Contract and the provisions that are not void or unenforceable are unaffected by the severance.
- 1.5 If anything is required to be done or satisfied on a day that is not a Business Day, it must be done or satisfied instead on the next Business Day.
- 1.6 In the interpretation of this Contract, unless the context or subject matter otherwise requires:
- (a) singular includes plural and vice versa;
  - (b) words importing one gender include every gender;
  - (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  - (d) reference to a person includes any other entity recognised by law and vice versa;
  - (e) month means a calendar month;
  - (f) reference to any party to this Contract includes the party's successors, substitutes and assigns;
  - (g) an agreement, representation or warranty on the part of two or more persons binds all of them and an agreement, representation or warranty in favour of two or more persons is for the benefit of each and all of them; and
  - (h) if any term of this Contract is legally unenforceable or made inapplicable, that term will be severed or read down but so as to maintain (as far as possible) all other terms of this Contract, unless to do so would change the underlying principal commercial purposes of this Contract.

## **2. EXCLUDED AND AMENDED CONDITIONS**

- 2.1 The Standard Conditions do not apply to this Contract to the extent that they are excluded or modified by these Special Conditions.
- 2.2 The parties agree that the Standard Conditions have been excluded or modified for the following reasons:



- (a) the Buyer has satisfied itself about the Property and the Land before entering into this Contract; and
- (b) the Property is sold on an 'as is where is' basis.
- 2.3 Clauses 2.3, 4, 5.3(1)(b), 5.3(1)(e), 5.3(1)(f), 5.3(1)(g), 5.4, 5.5, 7.2, 7.4, 7.5(2), 7.5(3), 7.5(4), 7.6, 7.7(1), 7.7(2), 8.3 and 8.4 of the Standard Conditions are deleted.
- 2.4 Those existing clauses of the Standard Conditions described below as 'Existing Clauses' are deleted and replaced by the 'Replacement Clauses' described below:

Existing Clauses		Replacement Clauses
(a)	Clause 2.3(3)	'2.3(3) <i>If this Contract is terminated, the Buyer has no further Claim once it receives the Deposit and interest (if any).</i> '
(b)	Clause 5.8	'(1) <i>The Seller is not required to remove the Reserved Items from the Property.</i> (2) <i>The Buyer cannot Object to or make any Claim against the Seller by reason of the Reserved Items remaining at, in or on the Property or by reason of their removal by any person prior to settlement or after settlement.</i> (3) <i>The Seller is not required to reinstate and make good any damage caused by the Seller in removing the Reserved Items from the Property.</i> (4) <i>The Seller is not liable for any Claims which the Buyer may suffer or incur by reason of any interest in the Reserved Items and the Buyer indemnifies and will keep the Seller indemnified against those Claims.</i> (5) <i>The Seller gives no warranty as to ownership of any of the Reserved Items.'</i>
(f)	Clause 6.3(8)(d)	'(d) <i>"Settlement Obligations" means, in the case of the Buyer, its obligations under Standard Conditions 2.5(1) and 5.1(1) and in the case of the Seller, its obligations under Standard Condition 5.1(1), 5.3(1)(a), 5.3(1)(c) and 5.3(1)(d).'</i>
(g)	Clause 7.3	'7.3 <i>Notwithstanding any provisions of this Contract, the parties agree that the Seller is not responsible for complying with any requisition notice or order issued pursuant to any statute or by any Authority in respect of the Property or any footpaths or roads adjoining the Property.'</i>
(h)	Clauses 7.6(1) and 7.6(3)	'(1) <i>Any valid notice or order by any Authority or Court requiring work to be done or money to be spent in relation to the Property ('<b>Work</b> or <b>Expenditure</b>') must be fully complied with by the Buyer whether issued before, on or after the Contract Date.'</i>

		<i>'(3) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1), which is required to be completed before the Settlement Date, may be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the cost of that Work or Expenditure must be added to the Balance Purchase Price.'</i>
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2.5 The following clauses described below as 'New Clauses' are inserted in the Standard Conditions at the clause numbers described below as 'Clause Numbers':

	Clause Numbers	New Clauses
(a)	Clause 2.5(16)	<i>'(16) The Seller's liability for any Outgoings in respect of the Property merges on settlement of this Contract.'</i>

2.6 The Buyer acknowledges and agrees that the modifications to the Standard Conditions in this Special Condition 2:

- (a) do not cause a significant imbalance in the parties' rights and obligations arising under this Contract; and
- (b) are reasonably necessary to protect the legitimate interests of the Seller, as a mortgagee exercising its power of sale, notwithstanding that the Seller may benefit from such provisions.

### **3. PROPERTY SOLD 'AS IS WHERE IS'**

3.1 The Seller makes no representations about the quality or condition of the Property.

3.2 The Buyer also acknowledges and agrees that before entering into this Contract:

- (a) the Buyer conducted its own enquiries about the Property and the Land so as to be assured that the Buyer would not be adversely affected by entering into and completing this Contract; or
- (b) if the Buyer has not conducted its own enquiries about the Property and the Land, the Seller allowed the Buyer adequate opportunity to conduct those enquiries but the Buyer, in full knowledge and understanding of the terms of this Contract, declined to conduct its own enquiries because the Buyer was satisfied that the Buyer would not be adversely affected by entering into and completing this Contract.

3.3 The Buyer accepts the Property and the Land in its present condition and subject to any legal and physical defects including without limitation any of the matters to which the Buyer has satisfied itself as stated in Special Condition 3.4(c). The Buyer agrees that the Property is being sold, and accepts the Property, in an 'as is where is' condition.

3.4 The Buyer:

- (a) does not rely on and has not been induced to enter into this Contract by any information provided or statements about the Property or the Land or representations or warranties either express or implied made by or on behalf of the Seller, the Seller's Agent or their respective employees or agents, other than as set out in this Contract;
- (b) has relied on the Buyer's own advice, enquiries and commercial judgement in entering into this Contract;
- (c) must not Object to or make any Claim against the Seller in respect of:
  - (i) any rights and privileges relating to the Land and/or the Property;
  - (ii) the existence or non-existence of any rights and privileges relating to the Land and/or the Property;
  - (iii) the existence or non-existence of any defects (latent or patent) affecting the Land and/or the Property or the title to the Property;
  - (iv) any error in the description or particulars of the Property, the title of the Property, or the boundaries or area of the Lot;
  - (v) the existence of any Encumbrances, encroachments, heritage status, notices or history affecting the Property and/or the Land (whether adversely or not);
  - (vi) any walls or fences on the Property and/or the Land that should be on the boundaries of the Property and/or the Land but which are not;
  - (vii) the state of repair and condition, quality, quantity, structural soundness and absence or otherwise of impediments, faults, inadequacies and defects in the Property and/or the Land or any improvements on the Property and/or the Land, whether or not the construction or use of the Property and/or the Land is, or will be, lawful;
  - (viii) whether or not the Property, the improvements on the Land (including any pool) and any occupation of those improvements comply with all obligations under the Building Code of Australia, *Building Act 1975* (Qld), *Fire and Emergency Services Act 1990* (Qld) and regulations, and the *Building Fire Safety Regulation 2008* (Qld) including whether or not a Pool Safety Certificate has issued for any pool on the Land;
  - (ix) the fitness of the Property for the purposes the Buyer wants it;
  - (x) the zoning, restrictions and potential use of the Property, including the lawful purposes for which the Property may be used, or the suitability of the Land for future development;
  - (xi) the existence or otherwise of necessary approvals and consents relating to the Property (if any) or the current or intended use of the Property, including any failure to comply with any conditions of such approvals or consents;

- (xii) the existence or otherwise of necessary approvals and licences from any Authority relating to the Property, including any failure to comply with any approvals or licences and the state of any conditions under those approvals;
  - (xiii) the future economic feasibility, viability and economic return of the Property or use of the Property;
  - (xiv) the value of the Property;
  - (xv) whether there are any requirements of any Authority relating to the Property, including enforcement notices, notices requiring the doing of work in relation to the Property, resumptions, road dedications, road widenings and similar things;
  - (xvi) the means of access to the Property;
  - (xvii) whether any services (such as electricity, telecommunications, sewerage and water) are connected to the Property or available to the Land;
  - (xviii) any contamination of the Land or the Property or the existence of any hazardous substance or hazardous contaminant within the meaning of the *Environmental Protection Act 1994* (Qld);
  - (xix) any adverse Claims against, or current or threatened litigation by any person claiming an estate or interest in, the Property;
  - (xx) the GST treatment of the supply of the Property to the Buyer or the ability to obtain any GST exemptions or concessions;
  - (xxi) the existence, currency or adequacy of any insurance policies held in connection with the Property or the Land;
  - (xxii) any transfer, lease, easement or other right over the Land given to any Authority, or private owner;
  - (xxiii) the accuracy of any statement made or information contained in an information memorandum or similar document prepared by or on behalf of the Seller; and
  - (xxiv) any chattels or furniture within the Property and the ownership of or title to those chattels or furniture;
- (d) acknowledges that the Seller, in entering into this Contract, has relied on and been induced by the acknowledgements, representations and warranties made by the Buyer in this Contract and but for these assurances, the Seller would not have entered into this Contract;
- (e) has determined to enter into this Contract and proceed to settlement regardless of the matters referred to in this Special Condition 3; and
- (f) agrees that the Buyer will not be materially prejudiced by any of the matters referred to in Special Condition 3.

3.5 To the extent permitted by law, the Buyer agrees not to make and waives any right it may have to claim against the Seller, or any officers, employees or agents of the Seller, under schedule 2, section 18 of the *Competition and Consumer Act 2010* (Cth) or the corresponding provision of any State or Territory enactment.

#### **4. ENTIRE CONTRACT**

4.1 This Contract (including any annexures) contains the entire understanding and agreement between the parties as to the subject matter of this Contract.

4.2 All previous negotiations, understandings, representations, warranties (other than warranties set out in this Contract), memoranda or commitments in relation to, or in any way affecting, the subject matter of this Contract are merged in and superseded by this Contract and will be of no force or effect and no party will be liable to any other party in respect of the matters.

4.3 No oral explanation or information provided by any party to another will affect the meaning or interpretation of this Contract or constitute any collateral agreement, warranty or understanding between any of the parties.

#### **5. LAND SALES ACT – REGISTRATION OF SURVEY PLAN**

If the Survey Plan is not registered at the Contract Date, then:

(a) this Contract is subject to and conditional upon the Survey Plan being registered at the Department of Resources and the Seller settling the sale of the Land not later than eighteen (18) months from the Contract Date ("**Registration Date**"). If the Survey Plan is not registered by the Registration Date, then either party may terminate this Contract by giving written notice of termination to the other and in such case the Deposit Holder must refund the Deposit in full to the Buyer and no party will have any claim or action against the other as a result; and

(b) the Deposit Holder holds the Deposit as Trustee pursuant to the relevant provision of the LSA.

#### **6. DISCLOSURE PLAN AND DISCLOSURE STATEMENT**

6.1 The Buyer acknowledges that, prior to entering into this Contract, the Buyer received a Disclosure Statement and Disclosure Plan, copies of which are contained in **Annexure C** and **Annexure D** respectively and further acknowledges that the Disclosure Plan complies with section 11 of the LSA.

6.2 The Buyer acknowledges receiving a copy of the Decision Notice of the Burdekin Shire Council which contains the Development Approval for the Land, and that the Buyer has reviewed and satisfied itself in relation to the Conditions set out in the Decision Notice prior to entering this Contract.

#### **7. EASEMENTS**

7.1 The Buyer acknowledges that the Land may be subject to encumbrances (including Easements) as disclosed on the Lot Title.

7.2 The Buyer consents to an Easement or Easements being granted over the Land to burden the Land for purposes of services or drainage to the Land or other lots in the Development provided that such Easements will not materially affect the Buyer's ordinary rights to use and enjoy the Land.

## **8. SETTLEMENT DATE**

8.1 If the Survey Plan is not registered as at the Contract Date then the Settlement Date is the later in time of:

- (a) the date sixty (60) days after the Seller or the Seller's Solicitor have notified the Buyer or the Buyer's Solicitor in writing that the Survey Plan creating a separate title for the Land has been registered at the Department of Resources; or
- (b) thirty (30) days after the Contract Date.

8.2 If the Survey Plan is registered as at the Contract Date then the Settlement Date thirty (30) days after the Contract Date.

## **9. EXTENSION OF SETTLEMENT DATE BY SELLER**

9.1 If, on or prior to the Settlement Date:

- (a) the Seller is for any reason unable to deliver possession of the Property to the Buyer;
- (b) an order or decree of a court of competent jurisdiction is made against the Seller which takes effect as an interim or permanent injunction restraining the Seller from performing this Contract;
- (c) the Seller is unable to provide the Buyer with a transfer of the Lot that is capable of immediate registration (including, without limitation, due to the existence of a caveat or writ of execution on the title to the Property); or
- (d) in the Seller's reasonable opinion any other impediment to settlement of the Contract by the Seller, or performance of the Seller's obligations under the Contract, arises, the Seller may, by notice in writing to the Buyer:
  - (i) extend the Settlement Date until such later date as is required by the Seller to overcome the impediment, such date to be no later than three months from the original Settlement Date (the Extension Period); and/or
  - (ii) terminate this Contract, in which event any Deposit (and any interest earned on the Deposit) will be refunded to the Buyer, but without costs or damages, and the Buyer will accept these monies in full and final satisfaction of all Claims it may have against the Seller.

9.2 A notice provided by the Seller in accordance with Special Condition 9.1(d)(i) may be given by the Seller more than once, provided that the aggregate Extension Period is no more than three months after the original Settlement Date.

9.3 The Buyer must not Object or make any Claim against the Seller where the Seller terminates this Contract or extends the Settlement Date under this Special Condition 9.

9.4 Given the terms on which the Seller has offered the Property for sale and on which the Buyer has agreed to purchase the Property, the Buyer acknowledges and agrees that the provisions of this Special Condition 9:

- (a) do not cause a significant imbalance in the parties' rights and obligations arising under this Contract; and
- (b) are reasonably necessary to protect the legitimate interests of the Seller, as a mortgagee exercising its power of sale, notwithstanding that the Seller may benefit from such provisions.

## **10. BUILDING COVENANTS**

The Buyer:

- (a) acknowledges that they were provided with a copy of the Building Covenants prior to or at the time of entering into this Contract;
- (b) acknowledges that the Building Covenants are an important part of the Contract, and design of the Development generally, and will follow the requirements outlined in those Building Covenants; and
- (c) on the sale or otherwise transfer of the Property to a subsequent owner, the Buyer will ensure that:
  - (i) the Building Covenants form part of that new contract (or any subsequent contract); or
  - (ii) that the subsequent owner is provided a copy of the Building Covenants; and
  - (iii) will ensure that the Deed Poll contained in the Building Covenants is completed by all parties, as necessary.

## **11. BUYER'S STATEMENTS**

The Buyer states and warrants to the Seller that:

- (a) the Buyer (if a company) is duly incorporated and validly existing under the laws of its jurisdiction of incorporation and has full corporate power and lawful authority to execute and deliver this Contract and to consummate and perform or cause to be performed its obligations under this Contract;
- (b) this Contract constitutes a legal, valid, and binding obligation of the Buyer enforceable in accordance with its terms by appropriate legal remedy; and
- (c) this Contract and its settlement does not conflict with or result in a breach or a default under any provision of its constitution (if the Buyer is a company), or any material term or provision of any agreement or deed or any writ, order or injunction, judgement, law, rule or regulation to which it is a party or is subject or by which it is bound.

## 12. TRUSTEE

In the event that the Buyer has entered into this Contract as trustee of any Trust, the existence of which may or may not have been notified to the Seller, (the **Trust**), then:

- (a) the Buyer declares that it enters into this Contract as trustee of the Trust;
- (b) the Buyer warrants to the Seller that:
  - (i) the Trust is validly created and is in existence;
  - (ii) the Buyer is the sole trustee of the Trust and has been validly appointed;
  - (iii) the Buyer has full and free power and authority to enter into this Contract and to perform all the obligations imposed upon it pursuant to this Contract; and
  - (iv) entry into this Contract is for the benefit of the beneficiaries of the Trust; and
  - (v) there is no restriction on the Buyer's right of indemnity out of or lien over the Trust's assets and the Buyer's right of indemnity will have priority over the right of the beneficiaries to the Trust's assets.

## 13. BUYER'S INCAPACITY

Without limiting, negating or restricting any rights which may be available to either party in law or equity, it is agreed that should the Buyer (and if more than one entity, then any one of them) prior to the Settlement Date:

- (a) being a company:
  - (i) resolve to go into liquidation or have an application for its winding up filed;
  - (ii) enter into any scheme or arrangements with its creditors; or
  - (iii) have a controller, administrator, liquidator, provisional liquidator, receiver, receiver and manager, official manager or managing controller appointed over it or any of its assets; or
- (b) being a natural person:
  - (i) dies;
  - (ii) becomes mentally ill; or
  - (iii) is declared a bankrupt or enters into any arrangement with its creditors,
  - (iv) then the Buyer will be deemed to have defaulted in the observance of an essential term of this Contract and the Seller is permitted to terminate this Contract and rely on the provisions of clause 9.4 of the Standard Conditions.



#### **14. NOTICE TO SELLER TO REMEDY BREACH**

- 14.1 The Buyer must not exercise its right under Standard Condition 9.1 to terminate or purport to terminate this Contract without first giving the Seller a written notice requiring the Seller to remedy the breach within a period of 14 days after the notice is given to the Seller (a Breach Notice).
- 14.2 The Buyer is only permitted to terminate this Contract if, upon expiry of the 14 day period in the Breach Notice, the Seller has not remedied the breach described in the Breach Notice.
- 14.3 This Special Condition 14 applies notwithstanding any other provisions in this Contract.

#### **15. BUYER'S INDEMNITY**

The Buyer will indemnify and keep indemnified the Seller against all Claims which the Seller may suffer, sustain or incur on or subsequent to the Settlement Date, or from events or occurrences happening or arising on or subsequent to the Settlement Date, in respect of the Property or any act, matter or thing occurring on the Property or by which the Buyer may become liable in any way, unless and to the extent that the same be caused or contributed to by the Seller.

#### **16. LIMITATION OF LIABILITY**

- 16.1 Notwithstanding any other provision of this Contract, the maximum aggregate amount that the Buyer may receive from any Claim against the Seller arising under or in connection with this Contract (inclusive of interest and enforcement costs) is strictly limited to an amount equal to the Purchase Price.
- 16.2 Given the terms on which the Seller has offered the Property for sale and on which the Buyer has agreed to purchase the Property, the Buyer acknowledges and agrees that the provisions of this Special Condition 16:
- (a) do not cause a significant imbalance in the parties' rights and obligations arising under this Contract; and
  - (b) are reasonably necessary to protect the legitimate interests of the Seller, as a mortgagee exercising its power of sale, notwithstanding that the Seller may benefit from such provisions.

#### **17. CONFIDENTIALITY**

A party may only use confidential information of another party for the purposes of this Contract, and must keep the terms of this Contract and any confidential information of another party confidential except where:

- (a) the information is public knowledge (but not because of a breach of this Contract) or the party has independently created the information;
- (b) disclosure is required by law or a regulatory body (including a relevant stock exchange); or

- (c) disclosure is made to a person who must know for the purposes of this Contract on the basis that the person keeps the information confidential.

## **18. COSTS AND DUTY**

The parties must pay their own costs of and incidental to the sale and purchase of the Property, but all duty on this Contract will be paid by the Buyer and if not paid by the Buyer, may be paid by the Seller and recovered from the Buyer as a liquidated debt.

## **19. ELECTRONIC TRANSACTIONS**

For the purposes of sections 11 and 12 of the *Electronic Transactions Act 2001* (Qld), the Seller and Buyer consent to information being given by electronic communication.

## **20. EXCHANGE BY FACSIMILE, EMAIL**

The Buyer and Seller agree that this Contract may be entered into by email, facsimile or photocopy by either or both parties and such a Contract will be binding on both parties.

## **21. GENERAL PROVISIONS**

- 21.1 Any amendment or variation to this Contract is not effective unless it is in writing and signed by the parties.
- 21.2 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- 21.3 A waiver is not effective unless it is in writing.
- 21.4 The Buyer must not assign its interest under this Contract prior to settlement.
- 21.5 Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the Buyer and survives termination of this Contract.

## **22. GUARANTEE AND INDEMNITY**

- 22.1 If the Buyer is or includes a company (other than a 'public company' as defined in the *Corporations Act 2001* (Cth)), the Buyer must, before this Contract is executed by the Buyer, procure the due execution of the Guarantee and Indemnity from each director of the company, contained in **Annexure B** hereto.

## Annexure B Guarantee and Indemnity

### Parties:

**Burdekin Shire Council** of 145 Young Street, Ayr in the State of Queensland  
("Seller")

\_\_\_\_\_ of \_\_\_\_\_

in the State of \_\_\_\_\_  
(Name and address of Guarantor 1)

\_\_\_\_\_ of \_\_\_\_\_

in the State of \_\_\_\_\_  
(Name and address of Guarantor 2)

("Guarantor")

### Background:

- A. The Buyer has offered to enter into the Contract.
- B. The Guarantor has offered and agrees to guarantee and indemnify the Seller as set out in this Guarantee and Indemnity.

### The parties agree:

#### 1. Definitions and Interpretation

- (a) For the purposes of this deed:
  - (i) **Contract** means the Contract to which this Annexure B is attached.
  - (ii) **Guarantee** means this document titled 'Guarantee and Indemnity'.
  - (iii) **Guarantor** means Guarantor 1 and Guarantor 2 (and any other director of the Buyer who signs a similar Guarantee) jointly and each of them severally.
  - (iv) **Buyer** means the party named as the Buyer in the Contract.
  - (v) Every agreement or undertaking expressed or implied by which more than one person agrees or undertakes any obligation or derives any benefit, binds or ensures for the benefit of such persons jointly and each of them severally.
  - (vi) Clause headings are for reference purposes only.

## **2. Consideration**

The Guarantor gives this Guarantee in consideration of the Seller agreeing to enter into the Contract with the Buyer. The Guarantor acknowledges the receipt of valuable consideration from the Seller for the Guarantor incurring obligations and giving rights under this Guarantee.

## **3. Guarantee and Indemnity**

- (a) The Guarantor unconditionally and irrevocably guarantees to the Seller the due and punctual performance and observance by the Buyer of its obligations under the Contract, including the obligations to pay money.
- (b) As a separate undertaking, the Guarantor unconditionally and irrevocably indemnifies the Seller against all liability or loss arising from, and any costs, charges or expenses incurred in connection with:
  - (i) a breach by the Buyer of the Contract, including a breach of any obligation to pay money; and
  - (ii) a representation or warranty by the Buyer in the Contract being incorrect or misleading when made; and
  - (iii) if settlement of the Contract is not being effected for any reason other than due to the default of the Seller.
- (c) It is not necessary for the Seller to incur expense or make payment before enforcing its right of indemnity.

## **4. Access to Contract**

The Guarantor acknowledges having been given a copy of the Contract and this Guarantee and having had full opportunity to consider their provisions before entering into this Guarantee.

## **5. Continuing security**

- (a) This Guarantee is a continuing security and it is not discharged by any one payment.
- (b) The Guarantor waives any right it has of first requiring the Seller to commence proceedings or enforce a right against the Buyer or any other person before claiming under this Guarantee.

## **6. Guarantee not affected**

- (a) The liabilities of the Guarantor under this Guarantee as a guarantor, indemnifier or principal debtor and the rights of the Seller under this Guarantee are not affected by anything which might otherwise affect them at law or in equity including, but not limited to, one or more of the following:
  - (i) the Seller granting time or other indulgence to, compounding or compromising with or releasing the Buyer or any other Guarantor;

- (ii) acquiescence, delay, acts, omissions or mistakes on the part of the Seller;
- (iii) any novation of a right or assignment of the benefit of the Contract by the Seller;
- (iv) any variation of the Contract;
- (v) insolvency, bankruptcy or winding up of the Buyer;
- (vi) any other person who is intended to execute this Guarantee or be a guarantor not executing this Guarantee or not being bound; or
- (vii) the validity or unenforceability of an obligation or liability of a person other than the Guarantor.

#### **7. Suspension of Guarantor's rights**

- (a) Until all money payable to the Seller in connection with the Contract is paid, the Guarantor may not, without the consent of the Seller:
  - (i) raise a set-off or counterclaim available to it or the Buyer against the Seller in reduction of its liability under this Guarantee; or
  - (ii) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of any security or guarantee held by the Seller in connection with the Contract.

#### **8. Reinstatement of guarantee**

If a claim that a payment or transfer to the Seller in connection with this Guarantee or the Contract is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Seller is entitled immediately as against the Guarantor to the rights to which it would have been entitled under this Guarantee if the payment or transfer had not occurred.

#### **9. Costs**

- (a) The Guarantor agrees to pay or reimburse the Seller on demand for:
  - (i) the Seller's costs and expenses in making, enforcing and doing anything in connection with this Guarantee including, but not limited to, legal costs and expenses on a full indemnity basis; and
  - (ii) all duties, fees, taxes and charges which are payable in connection with this Guarantee or a payment, receipt or other transaction contemplated by it.
- (b) Money paid to the Seller by the Guarantor must be applied first against payment of costs, charges and expenses under this clause then against other obligations under this Guarantee.

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**10. Notices**

A notice, approval, consent or other communication in connection with this Guarantee:

- (a) must be in writing; and
- (b) must be left at the address of the addressee stated in this Guarantee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee stated in this Guarantee or if the addressee notifies another address, facsimile number or email then to that address, facsimile number or email.

**11. General terms**

- (a) This Guarantee is a separate, collateral agreement to the Contract.
- (b) This Contract is governed by the laws of Queensland.
- (c) Any void, voidable or illegal term of this Guarantee is to be read down or severed leaving the balance operable.

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**WARNING**

**This is an important document**

By signing it you become personally responsible instead of, or as well as, the Buyer up to the amounts which the Buyer owes the Seller under the Contract. The amounts the Buyer owes the Seller can increase, for example, if interest is payable under the Contract.

You should:

- seek independent legal and financial advice before signing this document; and
- make inquiries about the creditworthiness, financial position and honesty of the Buyer.

Note:

- All directors of the Buyer company must sign this Guarantee.
- The signing of this Guarantee must be witnessed by a person over 18 years old who is not a co-guarantor or a party to the Contract.

**Executed** as a deed:

**SIGNED SEALED AND DELIVERED** by the person named in this document as Guarantor 1 in the presence of:

Signature of witness	Signature of Guarantor 1
----------------------	--------------------------

Name of witness – please print	Name of Guarantor 1 - please print
--------------------------------	------------------------------------

**SIGNED SEALED AND DELIVERED** by the person named in this document as Guarantor 2 in the presence of:

Signature of witness	Signature of Guarantor 2
----------------------	--------------------------

Name of witness – please print	Name of Guarantor 2 - please print
--------------------------------	------------------------------------

## Annexure C Disclosure Statement

### Section 12, Land Sales Act 1984 (Qld)

<b>Seller's Full Name:</b>	Burdekin Shire Council
<b>Seller's Full Address:</b>	PO Box 974, Ayr QLD 4806
<b>Buyer's Full Name:</b>	
<b>Buyer's Full Address:</b>	
<b>Proposed Lot:</b>	Lot _____ as shown on the Disclosure Plan contained in the Contract to which this Disclosure Statement is annexed

1. The Seller has given to the Buyer a Disclosure Plan for the Proposed Lot referred to above and the Buyer acknowledges receiving that copy prior to signing this Disclosure Statement or entering into any contract for the sale of the Proposed Lot. The Disclosure Plan has been given under section 10 of the *Land Sales Act 1984* (Qld).
2. A Development Approval has ~~has not~~\* been granted for reconfiguring a lot for the Proposed Lot.
3. A Development Approval has ~~has not~~\* been granted for any operational work for the Proposed Lot.
4. The Seller must settle the contract of sale for the Proposed Lot not later than 18 months after the Buyer enters into the contract for the sale of the Proposed Lot.
5. The Seller must give the Buyer any further documents that are required to be given to the Buyer under section 14(3) of the *Land Sales Act 1984* (Qld) at least fourteen (14) days before the contract for the sale of the Proposed Lot is settled.

\* NOTE – delete the word/s not applicable

**EXECUTED by Burdekin Shire Council by Terry )  
Paul Brennan, Chief Executive Officer having )  
the necessary delegation to execute this )  
Agreement and not having been notified of )  
revocation of that delegation in the presence )  
of:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print full name of witness

**EXECUTED by |##(BUYER 1)|##| )  
)  
)**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Dated



---

EXECUTED by |##(BUYER 2)##|

)  
)  
)

\_\_\_\_\_  
Signature

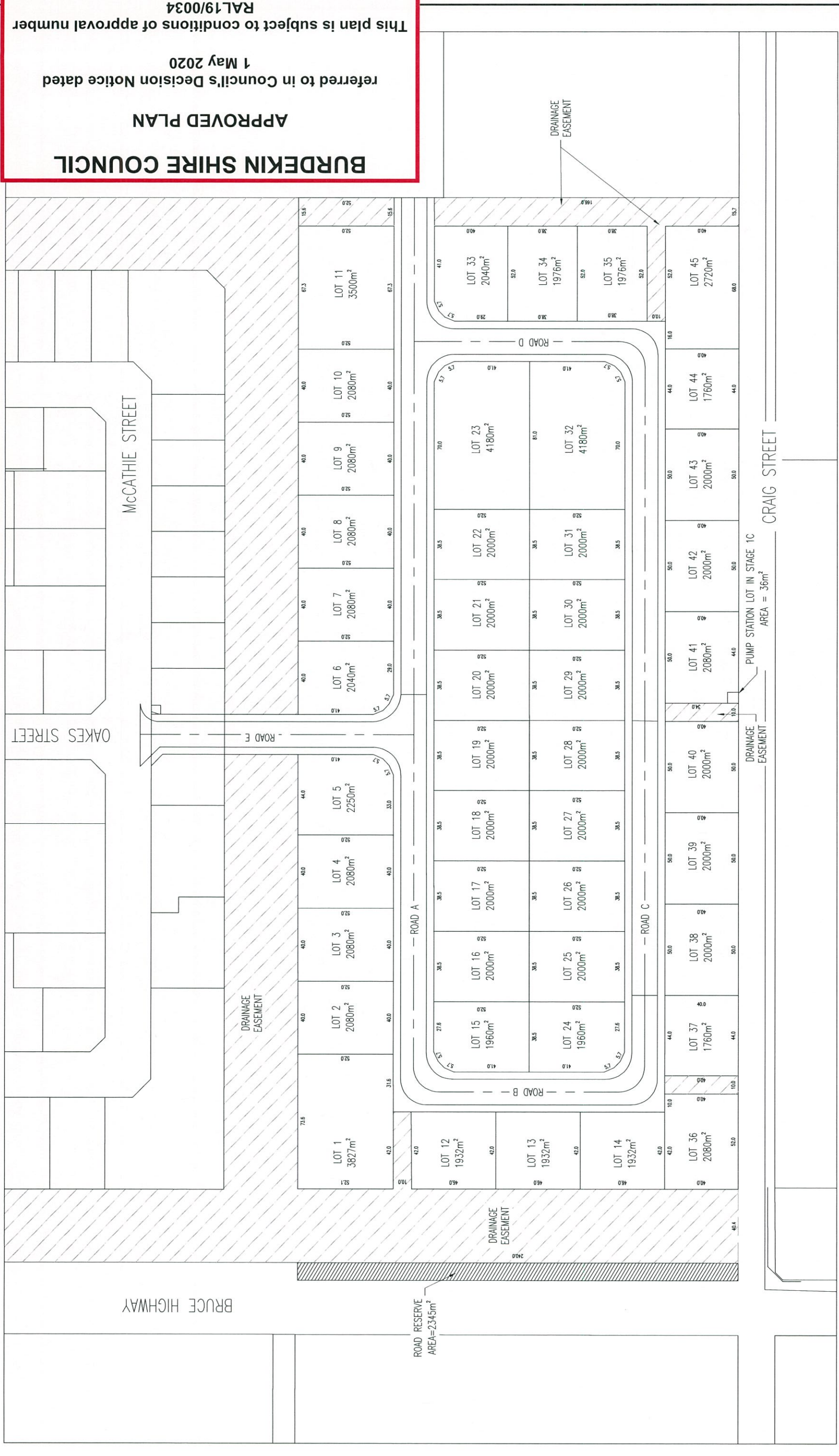
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Dated

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**Annexure D**      Disclosure Plan

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LAYOUT PLAN  
SCALE 1:2000

**BURDEKIN SHIRE COUNCIL**  
**APPROVED PLAN**  
referred to in Council's Decision Notice dated  
1 May 2020  
This plan is subject to conditions of approval number  
RAL19/0034

**AYR INDUSTRIAL ESTATE EXPANSION**  
STAGE DEVELOPMENT  
DETAILED LAYOUT PLAN

**Burdekin Shire Council**  
145 Young Street, Ayr QLD 4807 Phone: (07) 4783 9800  
PO Box 9, Ayr QLD 4807 Fax: (07) 4783 9999  
ABN: 66 393 043 285 E-mail: burdekin@burdekin.qld.gov.au



Revision	Date	Alterations and Remarks
1		ORIGINAL ISSUE

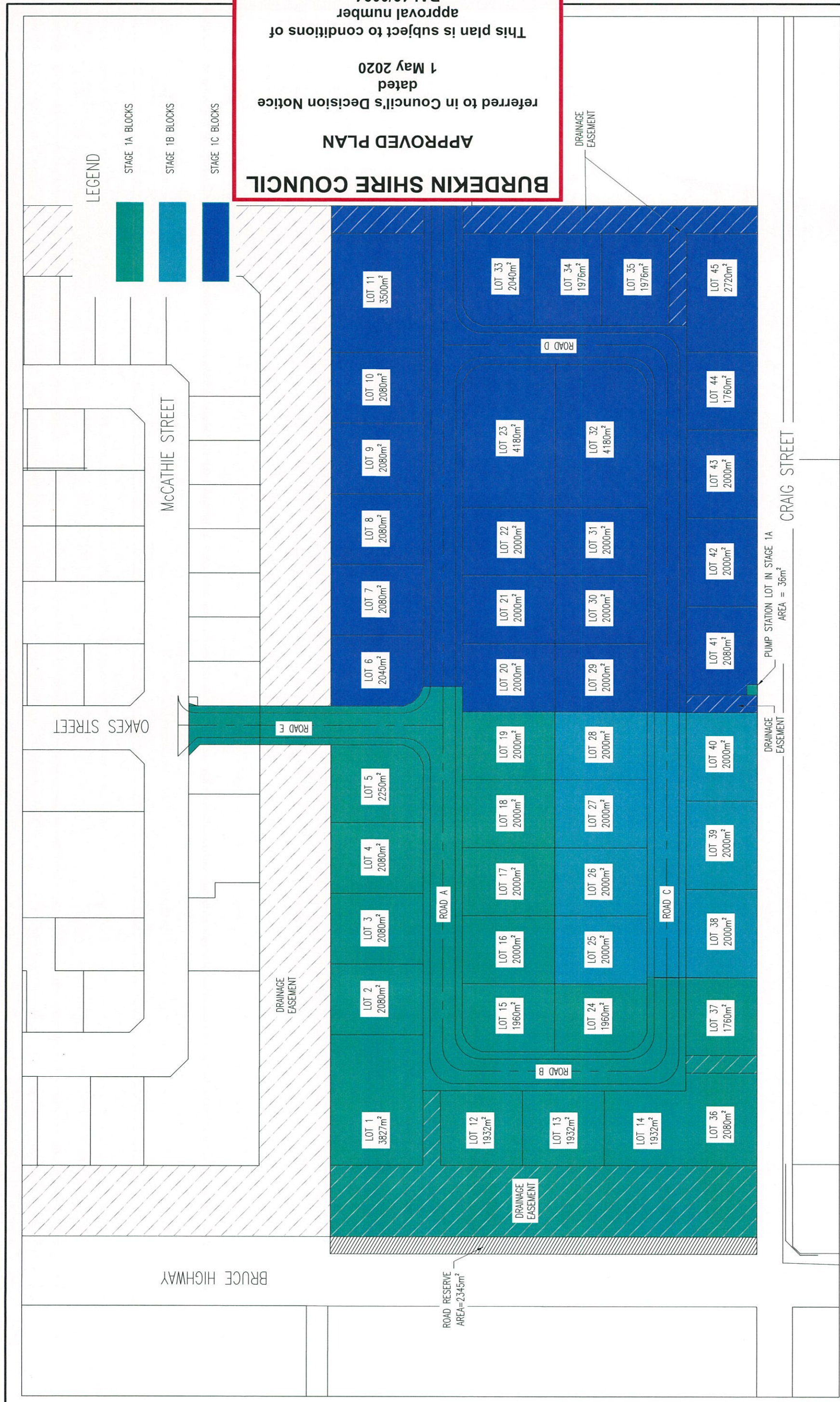
  

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Level Datum	ARBITRARY	Original Page Size	A3
Datum Location		Scale	AS SHOWN
Design	TH	Level Book No.	
Drawn	TH	Date	13/02/2020
File Name	M-1178-A	Date	13/02/2020
		Survey File	2019-001

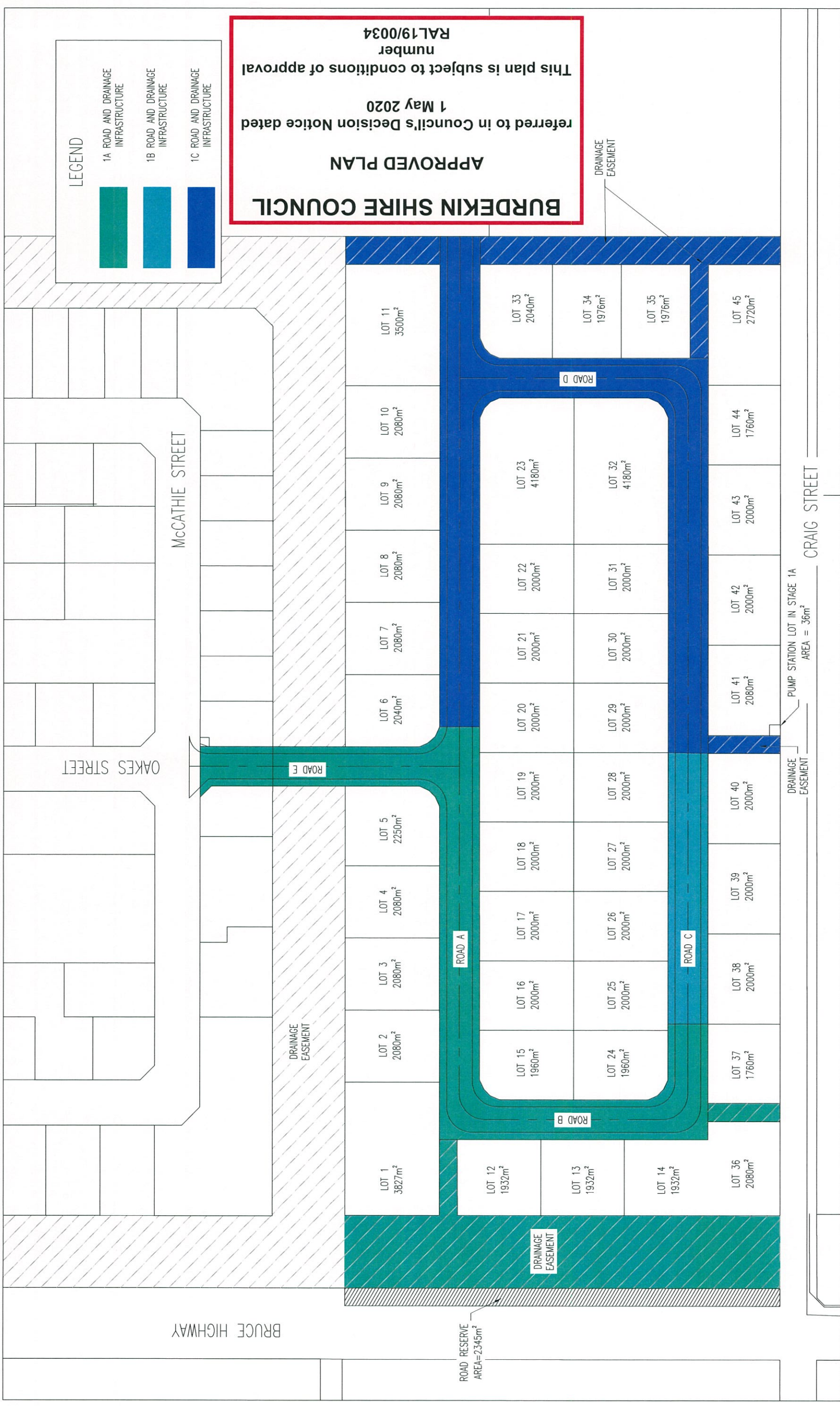
Project Number	200009	Plan Number	M-1178-9	Revision	A
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**BURDEKIN SHIRE COUNCIL**  
**APPROVED PLAN**  
 referred to in Council's Decision Notice  
 dated 1 May 2020  
 This plan is subject to conditions of  
 approval number RAL19/0034

LAYOUT PLAN  
 SCALE 1:2000

<p><b>Burdekin Shire Council</b>          145 Young Street, Ayr Qld 4807 Phone: (07) 4783 9800          PO Box 974, Ayr Qld 4807 Fax: (07) 4783 9599          ABN: 66 395 845 289 E-mail: burdekin@burdekin.qld.gov.au</p>		<p><b>AYR INDUSTRIAL ESTATE EXPANSION</b>          STAGE DEVELOPMENT          STAGE BLOCKS</p>		<p>Project: <b>200009</b> Plan Number: <b>M-1178-6</b> Revision: <b>A</b></p>	
Level Datum	ARBITRARY	Original Page Size	A3	Level Book No.	AS SHOWN
Datum Location		Scale		Date	13/02/2020
Design	TH	Date	13/02/2020	Survey File	2019-001
Drawn	TH	Date	13/02/2020	File Name	M-1178-A
Alterations and Remarks					ORIGINAL ISSUE
Revision					A

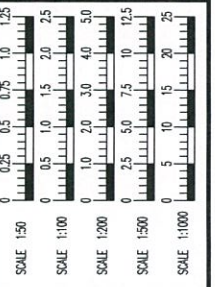


LAYOUT PLAN  
 SCALE 1:2000

**AYR INDUSTRIAL ESTATE EXPANSION**  
 STAGE DEVELOPMENT  
 STAGE ROAD AND DRAINAGE NETWORK

Level Datum	ARBITRARY	Original Page Size	A3
Datum Location		Scale	AS SHOWN
Design	TH	Level Book No.	
Drawn	TH	Date	13/02/2020
File Name	M-1178-A	Date	13/02/2020
		Survey File	2019-001

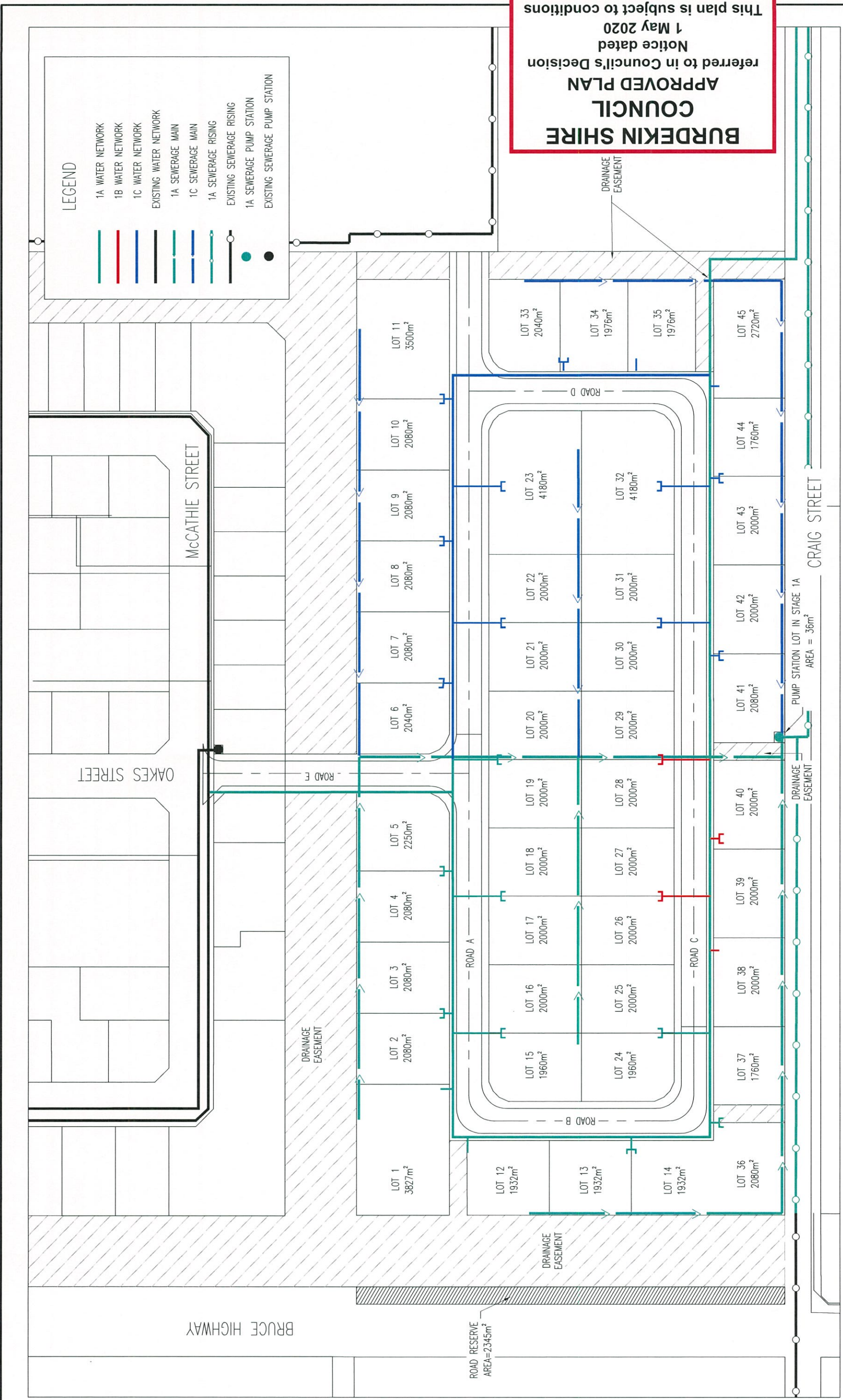
Revision	Date	Alterations and Remarks
A		ORIGINAL ISSUE



**Burdekin Shire Council**  
 145 Young Street, Ayr QLD 4807 Phone: (07) 4783 9800  
 PO Box 6, Ayr QLD 4807 Fax: (07) 4783 9999  
 ABN: 66 395 843 289 E-mail: burdekin@burdekin.qld.gov.au

**Burdekin Shire Council**

Project Number 200009 Plan Number M-1178-7 Revision A



LAYOUT PLAN  
SCALE 1:2000

**AYR INDUSTRIAL ESTATE EXPANSION**  
 STAGE DEVELOPMENT  
 STAGE SEWERAGE AND WATER NETWORK

**Burdekin Shire Council**  
 145 Young Street, Ayr QLD 4807 Phone: (07) 4783 9800  
 PO Box 944, Ayr QLD 4807 Fax: (07) 4783 9999  
 ABN: 66 393 843 285 Email: burdekin@burdekin.qld.gov.au

Project Number 200009 Plan Number M-1178-8 Revision A

Revision	Date	Alterations and Remarks	Level Datum	Original Page Size	Project
A		ORIGINAL ISSUE	M-1178-A	A3	2019-001
			AS SHOWN	Scale	
			TH	Level Book No.	
			TH	Date	13/02/2020
			TH	Date	13/02/2020
			TH	Survey File	2019-001



**BURDEKIN SHIRE COUNCIL**  
**APPROVED PLAN**  
 referred to in Council's Decision Notice dated  
 1 May 2020  
 This plan is subject to conditions of approval number  
 RAL19/0034

Structure plan area  
 Easements  
 Cadastral

DRAWING NO. **M1519-SK-01**  
 SCALE (at A3 original) **1:2500**  
 DATE **02/12/2019**  
 REVISION  
 SHEET **1 of 1**  
 AUTHOR(S) **MS**

SOURCE(S)  
 Milford Planning GIS at publication date:  
 Esri, Ordnance Survey, DeLorme, aerial imagery, Google, 2019  
 NOTE: Areas and dimensions are approximate only and are subject to site survey.

DRAWING TITLE  
**Schedule 1 - Structure Plan Area**  
**Ayr Industrial Estate Expansion Plan of Development**  
 PROPERTY ADDRESS  
**31-87 Craig Street, Ayr**  
**Lot 1 on RP733033**


**MILFORD PLANNING**  
 Document Set ID: 1588659  
 Version: 1, Version Date: 06/05/2020

DRAFT



# Decision Notice

## Planning Act 2016

1<sup>st</sup> May, 2020

Burdekin Shire Council  
C/- Milford Planning  
PO Box 5463  
Townsville QLD 4810

Attention: Matteo Sandona

Dear Matteo,

I refer to your application and advise that Development Application No. RAL19/0034 was assessed and approved in full subject to conditions. The decision was made by the assessment manager and decided at a full ordinary meeting of council on the date below.

Details of decision are as follows:

### Application Details

<b>Application Number:</b>	RAL19/0034
<b>Street Address:</b>	31-87 Craig and 23-25 McCathie Street, Ayr QLD 4807
<b>Real Property Description:</b>	Lot 1 on RP733033, Lot 12 on SP123414 and Lot 16 on RP745329
<b>Planning Scheme</b>	Burdekin Shire IPA Planning Scheme 2011

### Decision Details

<b>Type of Decision:</b>	Approval with conditions
<b>Type of Approval:</b>	Preliminary Approval for Material Change of Use – Variation Request to facilitate the Ayr Industrial Estate Expansion  Development Permit for Reconfiguring a Lot (3 lots into 48 lots)
<b>Date of Decision:</b>	28 <sup>th</sup> April, 2020

### Currency Period of Approval

The currency period for this development approval is 6 years for the Preliminary Approval for Material Change of Use and 4 years for the Development Permit for Reconfiguring a Lot, respectively. This starts the day that this development approval takes effect. (Refer to section 85 “Lapsing of approval at end of currency period” of the *Planning Act 2016*.)

Please note that in terms of the Planning Act, the currency period can only be extended if the request is received before the approval lapses (see section 85 “Lapsing of approval at end of currency period”).

## Infrastructure

Where conditions relate to the provision of infrastructure, these are non-trunk infrastructure conditions unless specifically nominated as a “**necessary infrastructure condition**” for the provision of trunk infrastructure as defined under chapter 4 of the *Planning Act 2016*.

## Assessment Manager Conditions

### General

- 1.1 All rates and charges (including regulated infrastructure charges) in arrears in respect of the land the subject of the application are paid in full prior to the commencement of the proposed use or notation of the plan of subdivision, whichever comes first.

### Plan of Development

- 2.1 This preliminary approval and development permit apply only to the structure plan area shown on ‘Schedule 1 – Structure Plan Area Ayr Industrial Estate Expansion Plan of Development’, Plan Reference M1519–SK–01, Revision N/A, prepared by Milford Planning, dated 2 December 2019.
- 2.2 Development occurs in accordance with the ‘Ayr Industrial Estate Expansion Plan of Development’, Document Reference M1519, Revision 3, prepared by Milford Planning, dated 20 April 2020. This includes the following:
  - (a) Purpose and overall outcomes;
  - (b) Levels of assessment; and
  - (c) Ayr Industrial Estate Expansion Development Code.
- 2.3 The effect of the *Burdekin Shire IPA Planning Scheme 2011* is varied only to the extent included in the ‘Ayr Industrial Estate Expansion Plan of Development’, Document Reference M1519, Revision 3, prepared by Milford Planning, dated 20 April 2020.
- 2.4 The ‘Ayr Industrial Estate Expansion Plan of Development’, Document Reference M1519, Revision 3, prepared by Milford Planning, dated 20 April 2020 prevails to the extent of any inconsistency with the *Burdekin Shire IPA Planning Scheme 2011*.
- 2.5 The ‘Ayr Industrial Estate Expansion Plan of Development’, Document Reference M1519, Revision 3, prepared by Milford Planning, dated 20 April 2020 does not vary the effect of overlays or the category of assessment for building work and operational work in the *Burdekin Shire IPA Planning Scheme 2011*.
- 2.6 The balance of Lot 1 on RP733033 not within the ‘Schedule 1 – Structure Plan Area Ayr Industrial Estate Expansion Plan of Development’, Plan Reference M1519–SK–01, Revision N/A, prepared by Milford Planning, dated 2 December 2019, and adjacent to the Bruce Highway, is to be used as a drainage easement only.

### Approved Plans

- 3.1 The approved development must be carried out and maintained generally in accordance with the drawings/documents identified in the below table:

Document	Plan Ref, Rev.	Prepared by	Date
Schedule 1 – Structure Plan Area Ayr Industrial Estate Expansion Plan of Development	M1519–SK–01, Revision N/A	Milford Planning	02/12/2019
Ayr Industrial Estate Expansion Stage Development Detailed Layout Plan	M–1178–9, Revision A	Burdekin Shire Council	13/02/2020
Ayr Industrial Estate Expansion Stage Development Stage Blocks	M–1178–6, Revision A	Burdekin Shire Council	13/02/2020
Ayr Industrial Estate Expansion Stage Development Stage Road and Drainage Network	M–1178–7, Revision A	Burdekin Shire Council	13/02/2020
Ayr Industrial Estate Expansion Stage Development Stage Sewerage and Water Network	M–1178–8, Revision A	Burdekin Shire Council	13/02/2020
Ayr Industrial Estate Expansion Plan of Development	M1519, Revision 3	Milford Planning	20/04/2020
Ayr Industrial Estate Planning Stormwater Management Plan (as amended in red)	4220949, Revision A	GHD	01/08/2019
Ayr Industrial Estate Traffic Impact Assessment	4220434, Revision 0	GHD	01/05/2018
Stage 1A Traffic Impact Assessment Memorandum	4220434-MEM Revision B	GHD	06/02/2019
Ayr Industrial Estate Stage 1A Access Intersection Capacity Sensitivity Analysis Memorandum	4220434-MEM-B	GHD	22/11/2019

Except where modified by the conditions of approval and any approval issued thereunder; and

- (a) Any approval issued under this approval; and
  - (b) Any development permit for operational works relating to the reconfiguring of a lot.
- 3.2 Where a discrepancy or conflict exists between the written condition(s) of the approval and the approved plans, the requirements of the written condition(s) will prevail.
- 3.3 The proposed development must comply with all planning scheme requirements as applying at the date of this approval, except as otherwise specified by any condition.
- 3.4 The proposed development and all associated infrastructure is delivered to each lot generally in accordance with the three (3) stages identified on the 'Ayr Industrial Estate Expansion Stage Development Stage Blocks', Plan Reference M–1178–6, Revision A, prepared by Burdekin Shire Council, dated 13 February 2020.

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## Infrastructure – General

- 4.1 Any damage which is caused to council's infrastructure as a result of the proposed development must be repaired immediately.
- 4.2 The developer must, at its own cost, undertake all necessary alterations to public utility mains and services as are rendered necessary by carrying out any required external works or other works associated with the approved development.
- 4.3 The location of services (e.g. water, stormwater, sewerage, waste, drainage, electricity, telecommunications) must minimise the risk of adverse environmental or amenity impacts within or external to the site.

## Stormwater

- 5.1 A lawful point of stormwater discharge is achieved to the drainage easement locations identified on 'Ayr Industrial Estate Expansion Stage Development Stage Road and Drainage Network', Plan Reference M-1178-7, Revision A, prepared by Burdekin Shire Council, dated 13 February 2020.
- 5.2 All lots are to achieve a 0.25% minimum site grade in accordance with the 'Ayr Industrial Estate Planning Stormwater Management Plan' (as amended in red), Document Reference 4220949, Revision A, prepared by GHD, dated 1 August 2019.
- 5.3 The minor drainage shall consist of an underground system capable of conveying 50% AEP flows from the development and any external catchments currently flowing onto the land being developed in accordance with the 'Ayr Industrial Estate Planning Stormwater Management Plan' (as amended in red), Document Reference 4220949, Revision A, prepared by GHD, dated 1 August 2019.
- 5.4 The major drainage system shall consist of overland flow paths or suitably sized underground drainage capable of discharging 1% AEP flows from the development under normal circumstances and any external catchments currently flowing onto the land being developed in accordance with the 'Ayr Industrial Estate Planning Stormwater Management Plan' (as amended in red), Document Reference 4220949, Revision A, prepared by GHD, dated 1 August 2019.
- 5.5 The proposed drainage shall ensure that there is no worsening to upstream and downstream catchments.
- 5.6 The approved development and use(s) must not interfere with the natural flow of stormwater in the locality or cause ponding or concentration of stormwater on adjoining land or roads.
- 5.7 All stormwater calculations and detailed design shall be certified by a Registered Professional Engineer of Queensland and included as part of the operational works application.
- 5.8 Any pipe and surface grading during construction is undertaken under the direct supervision of a Registered Professional Engineer of Queensland to ensure construction grade control and minimise the potential for ponding in accordance with the 'Ayr Industrial Estate Planning Stormwater Management Plan', Document Reference 4220949, Revision A, prepared by GHD, dated 1 August 2019.
- 5.9 Drainage reserves and easements shall be provided as required by the stormwater design. The developer must, at its own cost, grant and register all such easements on the title document.
- 5.10 On-going maintenance associated with existing open stormwater drains and any proposed changes to these drains as a result of this application, shall be the responsibility of the developer for a period of twelve (12) months or up until the developer achieves off-maintenance.
- 5.11 Any future activities involving water-borne pollutants include bunds to all sealed impervious surfaces with receptors for spills and are linked to an on-site drainage treatment system.

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- 5.12 Any external catchments discharging to the premises must be accepted and accommodated within the development's stormwater drainage system.
- 5.13 Stormwater networks are to be designed in accordance with the current standards of the Queensland Urban Drainage Manual (QUDM) and Australian Rainfall and Runoff (AR&R).

### **Drainage Easements**

- 6.1 Stormwater drains, where required, are to be constructed in accordance with the following design specifications:
- (a) Open drains incorporated in the minor drainage system shall be located within drainage easements; and
  - (b) No drain invert is to be constructed lower than the existing standing water level.
- 6.2 Overland flow paths designed as part of the major drainage system shall be constructed within drainage easements to be dedicated to council.
- 6.3 Piped drains traversing allotments shall be located within drainage easements.
- 6.4 Construct drainage to be fully contained within drainage easements.
- 6.5 Temporary drainage constructed during the staging of the project shall be within easements. These easements may be relinquished at the completion of any future stages in the development which renders the easement unnecessary for the transportation of stormwater.
- 6.6 Solid, continual length fencing is not provided along the rear boundary of lots 1-11. These lots retain a relationship to open space within Lot 16 on RP745329.

### **Lot and Road Levels**

- 7.1 All new lots are to have finished levels above the 1% AEP flood level in accordance with the 'Ayr Industrial Estate Planning Stormwater Management Plan' (as amended in red), Document Reference 4220949, Revision A, prepared by GHD, dated 1 August 2019.
- 7.2 The new access road over Lot 16 on RP7453229, Road E, has a finished level above the 2% AEP flood level in accordance with relevant council standards.

### **Erosion and Sediment Control**

- 8.1 The development documents and implements erosion and sedimentation controls in a Construction Management Plan. These controls:
- (a) Avoid extensive earthworks on slopes greater than 15% (1:5);
  - (b) Minimise disturbance on slopes greater than 10% (1:10);
  - (c) Maintain natural flow paths for surface drainage;
  - (d) Incorporate sediment traps to prevent the movement of sediment off-site;
  - (e) Avoid long-term stockpiling of soil; and
  - (f) Identify the progressive rehabilitation of disturbed areas.
- 8.2 The stormwater and water management systems include erosion and sediment control measures to maintain or improve the environmental values of surface and ground water during and after construction.
- 8.3 There must be no release of soil, sand, mud or other sediments and contaminants to roads during construction or future use of the site to which this approval relates. All material transported to and from the site must be covered to prevent dust and spillage.

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## Access and Roadworks

- 9.1 The applicant is to dedicate the road reserve area identified along the Bruce Highway frontage in 'Ayr Industrial Estate Expansion Stage Development Detailed Layout Plan', Plan Reference M-1178-9, Revision A, prepared by Burdekin Shire Council, dated 13 February 2020, to the Department of Transport and Main Roads.
- 9.2 Access to the Ayr Industrial Estate Expansion is provided via a new road extension from McCathie Street. An unsignalised intersection is provided where Road E meets McCathie Street.
- 9.3 The developer must construct sealed roads along all road frontages to each property in accordance with the following and the 'Ayr Industrial Estate Traffic Impact Assessment', Document Reference 4220434, Revision 0, prepared by GHD, dated 1 May 2018:
- (a) The proposed roads shall be 14m wide kerb-to-kerb;
  - (b) Provide stand-up kerbing and channelling on both sides of the road with a distance of 14m between the kerbs and a minimum 4m wide footpaths on each side;
  - (c) Provide gravel pavement for the full width between kerbing and channelling and 40mm minimum thickness asphaltic concrete surface;
  - (d) Pavement markings and signage shall be provided in accordance with the Department of Transport and Main Roads' Manual of Uniform Traffic Control Devices; and
  - (e) Achieve a 2% minimum crossfall.
- 9.4 Gravel pavements shall be designed in accordance with the Queensland Transport Pavement Design Manual and relevant Department of Transport and Main Roads' standard specifications.
- 9.5 An application for street names must be submitted to and approved by council prior to the approval of Operational Works. Approved street names must be shown on all engineering drawings submitted with the operational works application.
- 9.6 Street nameplates must be erected at each intersection indicating the name of each street and the street numbers. The signs shall be in accordance with council standard street nameplates and be erected in accordance with the Department of Transport and Main Roads' Manual of Uniform Traffic Control Devices.
- 9.7 Corner truncations are provided at the following intersections shown on the 'Ayr Industrial Estate Expansion Stage Development Detailed Layout Plan', Plan Reference M-1178-9, Revision A, prepared by Burdekin Shire Council, dated 13 February 2020:
- (a) Road A and Road B;
  - (b) Road B and Road C;
  - (c) Road C and Road D;
  - (d) Road D and Road A;
  - (e) Road A and Road E; and
  - (f) Road E and McCathie Street (at the corner with Lot 12 on SP123414 and Lot 73 on SP102302).
- 9.8 Corner truncations are a minimum 5.5m x 3 equal chords, except at the corner of Road E and Lot 12 on SP123414 and Road E and Lot 73 on SP102302, which are single chords in accordance with relevant council standards.
- 9.9 Corner truncations are kept clear of development and other obstructions such as fences, drainage and landscaping.
- 9.10 The existing perimeter fence around the sewage pump station on Lot 73 on SP102302 maintains access between the pump station and Road E for pedestrians.
- 9.11 Provide a bitumen turnaround at the end of Road B and Road C when stages 1A and 1B are delivered. The turnaround shall have a minimum radius of 15m and be contained within the road reserve or easements. The dedicated road reserve or easement shall extend to a point 5m

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beyond the end of the turnaround. The construction of the turnaround is to be in accordance with council design guidelines.

- 9.12 All road reserves ensure minimum sight distances and turning radii meet safety standards.
- 9.13 Any road signs are installed in accordance with the Department of Transport and Main Roads' Design Guide for Roadside Signs and SD1452.
- 9.14 The road network is designed and constructed in accordance with the Austroads' *Guide to Traffic Engineering Practice Manuals, Guide to Traffic Management* and *Guide to Road Design* standards and the current edition of the Department of Transport and Main Roads' *Road Planning and Design Manual*.
- 9.15 Development achieves no net worsening to the Bruce Highway/Bird Street/Jones Street intersection in accordance with the 'Stage 1A Traffic Impact Assessment Memorandum', Document Reference 42204340-MEM, Revision B, prepared by GHD, dated 6 February 2019.

### **Operational Works**

- 10.1 Where operational works are required to be carried out, the developer must, within the timeframe required by the *Planning Act 2016* and prior to the commencement of any work, lodge with council an application for a development permit for operational works. As part of such an application, the developer must submit:
  - (a) Detailed and complete engineering drawings and specifications of the proposed works prepared by a civil engineer, who is both registered under the *Professional Engineer's Act 2002* and is a current Registered Professional Engineer of Queensland (RPEQ); and
  - (b) Certificate from the engineer who prepared the drawings stating that the design and specifications have been prepared in accordance with these conditions, relevant council codes and planning scheme policies and the relevant Australian Standard codes of practice.
- 10.2 No work commences prior to issue of a development permit for operational works.
- 10.3 Review background traffic trends and the operation of the Bruce Highway/Bird Street/Jones Street intersection and sections of the Bruce Highway south of Bird Street and south of Ayr prior to the commencement of future stages of development in accordance with the 'Ayr Industrial Estate Traffic Impact Assessment', Document Reference 4220434, Revision 0, prepared by GHD, dated 1 May 2018.

### **Street and Other Lighting**

- 11.1 Provide street lighting along all new streets in accordance with AS 1158.3.11 – Road Lighting (Lighting Category P4). The consent of council's Chief Executive Officer will need to be gained before the final designs are adopted.
- 11.2 Street lighting is serviced by underground electricity service mains.

### **Sewerage Supply Works – Internal**

- 12.1 The development must be serviced by council's reticulated sewerage system. The developer shall bear the costs associated with such connections including any alterations or upgrades to council's existing infrastructure to accommodate the proposed development. In particular:
  - (a) Each lot must be provided with a single property service to be connected directly and separately to council's sewer prior to signing the survey plan.
- 12.2 Sewerage supply networks are to be designed in accordance with the current Water Services Association of Australia (WSAA) standards.

### Water Supply Works – Internal

- 13.1 The development must be connected to council's reticulated water supply. The water connection must be provided at a location approved by council and at the full cost of the developer. Each of the proposed lots shall have separate water services:
- (a) A water network analysis, prepared by an appropriately qualified and experienced Registered Professional Engineer of Queensland (RPEQ), must be provided to council for approval as part of the development permit for operational works; and
  - (b) The water network analysis must demonstrate that for the entire development, a minimum pressure of 22m is available at the most disadvantaged allotment frontage/meter location upon completion of the stage, and detail stages at which trunk components of the network should be implemented.
- 13.2 Water supply networks are to be designed in accordance with the current Department of Natural Resources, Mines and Energy Planning Guidelines for Water Supply and Sewerage and relevant Water Services Association of Australia (WSAA) standards.

### Electricity and Telecommunications Supply

- 14.1 The developer must, prior to the release of the plan of survey, submit a letter from Ergon Energy (or other suitable entity) stating that satisfactory arrangements have been made with it for the provision of an underground electricity supply to the expansion area and must provide at the developer's cost:
- (a) A reticulated electricity supply to each lot in accordance with the requirements of the electricity service provider.
- 14.2 The developer must install electrical and telecommunications infrastructure to the satisfaction of the electricity and telecommunications service provider/s prior to the approval of the plan of survey.

### Compaction Standards

- 15.1 Where fill is incorporated on allotments, details of compaction standards obtained are to be provided to council. Such standards are to comply with the minimum standard for building construction.

### As-Constructed Plans

- 16.1 Prior to the release of the plan of survey, the developer shall provide council with a complete set of as-constructed plans for all works and an electronic copy which is to be compatible with council's system at the relevant time. Such plans are to be certified by a Registered Professional Engineer of Queensland.

## Referral Agencies

The referral agencies applicable to this application are:

Referral Status	Referral Agency and Address	Referral Trigger	Response
Concurrence	Department of State Development, Manufacturing, Infrastructure and Planning  NQ SARA PO Box 1732 Townsville QLD 4810	Schedule 10, Part 9, Division 4, Subdivision 1, Table 1, Item 1 – Infrastructure – State transport infrastructure generally  Schedule 10, Part 9, Division 4, Subdivision 2, Table 1, Item	The agency provided its response on 24 <sup>th</sup> December, 2019 (Reference



	Email: <a href="mailto:Townsville.NQRO@dsmip.qld.gov.au">Townsville.NQRO@dsmip.qld.gov.au</a>	1 – Reconfiguring a lot near a State transport corridor  Schedule 10, Part 9, Division 4, Subdivision 2, Table 3, Item 1 – Reconfiguring a lot near a State controlled road intersection  Schedule 10, Part 9, Division 4, Subdivision 2, Table 4, Item 1 – Material change of use near a State transport corridor	No. 1912-14512 SRA).  A copy of the response is attached.
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## Approved Plans

The following plans are approved plans for the development, as stated in condition 3.1:

### Approved Plans

Plan No.	Rev.	Plan Name	Date
M1519-SK-01	N/A	<i>Schedule 1 – Structure Plan Area Ayr Industrial Estate Expansion Plan of Development</i> , prepared by Milford Planning	02/12/2019
M-1178-9	Revision A	<i>Ayr Industrial Estate Expansion Stage Development Detailed Layout Plan</i> , prepared by Burdekin Shire Council	13/02/2020
M-1178-6	Revision A	<i>Ayr Industrial Estate Expansion Stage Development Stage Blocks</i> , prepared by Burdekin Shire Council	13/02/2020
M-1178-7	Revision A	<i>Ayr Industrial Estate Expansion Stage Development Stage Road and Drainage Network</i> , prepared by Burdekin Shire Council	13/02/2020
M-1178-8	Revision A	<i>Ayr Industrial Estate Expansion Stage Development Stage Sewerage and Water Network</i> , prepared by Burdekin Shire Council	13/02/2020
M1519	Revision 3	<i>Ayr Industrial Estate Expansion Plan of Development</i> , prepared by Milford Planning	20/04/2020
4220949	Revision A	<i>Ayr Industrial Estate Planning Stormwater Management Plan</i> (as amended in red), prepared by GHD	01/08/2019
4220434	Revision 0	<i>Ayr Industrial Estate Traffic Impact Assessment</i> , prepared by GHD	01/05/2018
4220434-MEM	Revision B	<i>Stage 1A Traffic Impact Assessment Memorandum</i> , prepared by GHD	06/02/2019
4220434-MEM-B	Revision B	<i>Ayr Industrial Estate Stage 1A Access Intersection Capacity Sensitivity Analysis Memorandum</i> , prepared by GHD	22/11/2019

## Referenced Documents

The documents identified above are referenced in the assessment manager conditions.

## Advisory Notes

The following notes are included for guidance and information purposes only and do not form part of the assessment manager conditions:

**ADVICE (Note: These are not conditions)**

- **Concurrence Agency Conditions**  
*The Department of State Development, Manufacturing, Infrastructure and Planning (NQ SARA) as a concurrence agency has imposed the conditions contained in the correspondence dated 24 December 2019.*
- **Earthworks**  
*If the development of the subject property requires soil to be imported or exported, the developer must identify the allotments which would be used for borrowing or filling and must obtain council approval for such works in addition to engineering approval for the development, including consideration of acid sulfate soil and preventing its release. The developer must also obtain council approval for the route of transport and the period and time of transport during the construction phase of the development.*
- **Environmental Considerations**  
**E.P.A. Requirements**  
*Construction must comply with the Environmental Protection Act, Policies and Guidelines, as amended from time-to-time, to prevent or minimise environmental harm and nuisance.*

### Property Notes

Not Applicable.

### Variation Approval

A Preliminary Approval for a Variation Request under the *Planning Act 2016* has been granted. The level of assessment and applicable codes for any development approval resulting from this preliminary approval are identified in the approved document, *Ayr Industrial Estate Expansion Plan of Development*, Document Reference M1519, Revision 3, prepared by Milford Planning, dated 20 April 2020.

### Further Development Permits Required

- Development Permit for Operational Work (for all subsequent infrastructure and site works)

### Submissions

There was one (1) properly made submission about the application. In accordance with the *Planning Act 2016*, the name, residential or business address, and electronic address of the principal submitter for each properly made submission is provided and attached.

Ms. Olive Breadsell  
PO Box 1322  
Ayr QLD 4807  
Email: [olivebreadsell@bigpond.com](mailto:olivebreadsell@bigpond.com)

### Rights of Appeal

You are entitled to appeal against this decision. A copy of the relevant appeal provisions from the *Planning Act 2016* is attached.

During the appeal period, you, as the applicant, may suspend your appeal period and make written representations to council about the conditions contained within the development approval. If council agrees (or agrees in part) with the representations, a “negotiated decision notice” will be issued. Only one “negotiated decision notice” may be given. Taking this step will defer your appeal period, which will commence again from the start the day after you receive a “negotiated decision notice”.

**Assessment Manager  
Signature:**

Date:

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Enc: Referral Agency Response  
Approved Plans/Documents  
Appeal Rights  
Statement of Reasons  
cc NQ SARA

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# Appeal Rights

## *Planning Act 2016 & The Planning Regulation 2017*

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### Chapter 6 Dispute resolution

#### Part 1 Appeal rights

##### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 of the Planning Act 2016 states –
  - (a) Matters that may be appealed to –
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) The person-
    - (i) who may appeal a matter (**the appellant**); and
    - (ii) who is a respondent in an appeal of the matter; and
    - (iii) who is a co-respondent in an appeal of the matter; and
    - (iv) who may elect to be a co-respondent in an appeal of the matter.

(Refer to Schedule 1 of the Planning Act 2016)

- (2) An appellant may start an appeal within the appeal period.
- (3) The **appeal period** is –
  - (a) for an appeal by a building advisory agency – 10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal – at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises – 20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice – 20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given – 30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for any other appeal – 20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note –*

*See the P&E Court Act for the court's power to extend the appeal period.*

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.
- (6) To remove any doubt. It is declared that an appeal against an infrastructure charges notice must not be about-
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund-
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

##### 230 Notice of appeal

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that-
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar must, within the service period, give a copy of the notice of appeal to –
  - (a) the respondent for the appeal ; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1 – each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2 – each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and
  - (f) for an appeal to the P&E Court – the chief executive; and

- (g) for an appeal to a tribunal under another Act – any other person who the registrar considers appropriate.  
The *service period* is –
- (a) if a submitter or advice agency started the appeal in the P&E Court – 2 business days after the appeal has started;  
or
  - (b) otherwise – 10 business days after the appeal is started.
- (4) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (5) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.

#### 231 Non-appealable decisions and matters

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section –  
*decision* includes-
  - (a) conduct engaged in for the purpose of making a decision; and
  - (b) other conduct that relates to the making of a decision; and
  - (c) the making of a decision or failure to make a decision; and
  - (d) a purported decision ; and
  - (e) a deemed refusal.*non-appealable*, for a decision or matter, means the decision or matter-
  - (a) is final and conclusive; and
  - (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, a tribunal or another entity; and
  - (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal or another entity on any ground.

#### 232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with the rules of the P&E Court.

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## Statement of Reasons

*Planning Act 2016 & The Planning Regulation 2017*

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This notice is prepared in accordance with s63(5) and s83(7) of the *Planning Act 2016* to inform the public about a decision that has been made in relation to a development application. The purpose of the notice is to enable a public understanding of the reasons for the planning decision, specifically having regard to:

- the relevant parts of the planning scheme and assessment benchmarks against which the application was assessed; and
- any other information, documents or other material council was either required to, or able to, consider in its assessment.

All terms used in this notice have the meanings given them in the *Planning Act 2016*.

### Assessment Benchmarks

The following assessment benchmarks applied to the proposed development:

- Strategic Framework and Desired Environmental Outcomes
- Village zone code
- Reconfiguring a lot code

### REASONS FOR THE DECISION

Following an assessment of the development application against the assessment benchmarks above, it was determined the proposed development be approved for the following reasons:

- Compliance is achieved with the higher-order provisions of the current planning scheme, including the strategic framework and desired environmental outcomes, as well as the Reconfiguring a lot code.
- The plan of development reflects the categories of assessment and assessment benchmarks for the Industry zone under the draft *Burdekin Shire Council Planning Scheme*. This reflects current industry land requirements for the shire.
- Development is a logical expansion of the adjoining Ayr Industrial Estate in a location that avoids the state wetland area to the north.
- Council has undertaken a strategic industrial land analysis that identified the existing estate is approaching capacity. Limited vacant land is available and development approvals in place will absorb residual supply over time.
- Industrial land assessment informing the new *North Queensland Regional Plan 2020* has identified a need for significantly more industrial land by 2026 that is suitably located and sized and connected to infrastructure and resources. The development provides a 'strategic reserve' of industrial land to respond to existing and emerging industry investment.
- The locational attributes of the subject site are optimal for future industrial development and are not achieved elsewhere. It has good access to road and rail; is close to existing industry, serviced by infrastructure, separated from sensitive land uses and readily developable; and avoids natural hazard and environmental areas.
- Development does not prejudice the use of existing Industry zone land, which is adaptable and can be replaced by industrial uses over time as demand arises.
- Traffic and stormwater assessments have demonstrated that the development will not adversely impact on the state-controlled road intersection or the drainage system. The application has been conditioned accordingly to ensure compliance.

### MATTERS RAISED IN SUBMISSIONS

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Issue	How matter was dealt with
<p><b>Level of conflict</b> <i>The proposed development conflicts with the planning scheme. Conflict has been identified with the following parts of the scheme:</i></p> <ul style="list-style-type: none"> <li>• Purpose of IPA, being the purpose of the scheme</li> <li>• Strategic framework and its focus on sustainable growth</li> <li>• Desired Environmental Outcomes: <ul style="list-style-type: none"> <li>- 3(a) regarding a sustainable economic base</li> <li>- 3(a)(vi) regarding industrial areas being free from encroaching incompatible land uses</li> <li>- 3(a)(vii) regarding expansion of industry into industry investigation areas</li> </ul> </li> </ul>	<p><b>Response</b> The development proposal is consistent with the purpose of the (now superseded) <i>Integrated Planning Act 1997</i>.</p> <p>The proposed development has been assessed against the strategic framework and desired environmental outcomes of the current planning scheme. Compliance with these higher-order provisions, as raised in the submission, has been achieved because:</p> <ul style="list-style-type: none"> <li>• Efficient use is made of land serviced by urban infrastructure.</li> <li>• Development avoids water resources, including the state wetland area to the north.</li> <li>• No environmental effects are created by the development in terms of adverse stormwater, flooding or traffic impacts.</li> <li>• It is a logical expansion of the existing industrial estate to support future industrial development in addition to existing industrial land supply in the region.</li> <li>• Development diversifies industrial enterprise opportunities and economic activity in the shire.</li> <li>• Land has suitable locational characteristics, being close to road and rail, within the urban centre of Ayr and separated from sensitive land uses.</li> <li>• The site is unconstrained by natural hazards (e.g. flooding) and is not classified as Good Quality Agricultural Land).</li> </ul>
<p><b>Sufficient grounds</b> <i>The applicant has not established sufficient grounds to approve the development application despite the conflicts.</i></p>	<p><b>Response</b> The proposal has some conflicts with the Village zone code under the current planning scheme. However, there are relevant grounds to overcome these conflicts, which include the following:</p> <ul style="list-style-type: none"> <li>• A strategic analysis of industrial land across the shire has demonstrated the need for appropriately located and sized land for industrial uses. It also requires a 'strategic reserve' of land for major investment opportunities and large users of industrial land.</li> <li>• Expansion of the estate in the manner intended by the Ayr Industrial Estate Masterplan is constrained by a state wetland area to the north.</li> <li>• Development approvals in place in the existing estate will be taken up over time and a longer-term supply is required.</li> <li>• Limited suitable industrial zone land supply is available elsewhere due to lot size, infrastructure availability, earthworks required, flooding and other constraints, and existing development approvals already in place on industry zone land.</li> </ul>
<p><b>Purpose of the Act</b> <i>The proposed development is contrary to the purpose of the Planning Act 2016.</i></p>	<p><b>Response</b> The development proposal is consistent with the purpose of the <i>Planning Act 2016</i>.</p>

<p>A statutory planning scheme amendment process would more appropriately achieve the purpose of the Act because it is subject to a state interest review process and applies a more rigorous assessment in the public interest.</p>	<p>A variation request is a relevant mechanism available to applicants under section 61 of the Act. These applications are subject to a level of rigour reasonably expected of applications under impact assessment.</p> <p>The variation request is consistent with assessment benchmarks in the draft planning scheme, which is currently undergoing a formal statutory plan-making process in accordance with section 18 of the Act. This will soon be subject to public consultation.</p>
<p><b>Need</b>  <i>The applicant has not established an overriding need for the development in the public interest despite the conflicts.</i></p> <p>No information about economic need or land use supply and demand has been provided. The application lacks evidence to explain why existing supply is unsuitable and that this is the best option in the public interest.</p>	<p><b>Response</b>        An industrial land study was prepared to inform the draft planning scheme and reflect the most up-to-date circumstances regarding regional industrial land supply. This study provides robust evidence to demonstrate need for additional industrial land as the existing Ayr Industrial Estate approaches capacity (currently 75% take up) and to ensure longer-term supply.</p> <p>The <i>North Queensland Regional Plan 2020</i> reports that the supply of well-located and suitably sized industrial land in the region is limited in the region. Industrial land assessments relied on in the regional plan nominate an additional 1,200ha of industrial land is required across the region by 2026.</p> <p>Suitable locations for industry are those that are serviced by energy and water, close to infrastructure corridors and benefit from intermodal links to key destinations. The subject site is an appropriate location in this respect.</p>
<p><b>Location</b>  <i>The development is not located in an area planned for industrial land uses and will result in out of sequence development and unplanned/unmanaged infrastructure upgrades.</i></p> <p>The development is in “proximity to infrastructure that comes with the Village/Residential zoning...outcompeting industrial landowners with existing active subdivision approvals and undermining landowners...”</p>	<p><b>Response</b>        The subject site demonstrates the following characteristics suitable for future industrial development:</p> <ul style="list-style-type: none"> <li>• It represents a logical expansion of the current Ayr Industrial Estate.</li> <li>• It is close to major, intermodal transport routes (Bruce Highway and North Coast Rail Line).</li> <li>• It is serviced by infrastructure networks.</li> <li>• The site is level and easily developable.</li> <li>• The site is well separated from adjacent sensitive land uses by vacant land.</li> <li>• Development avoids natural hazards and environmental areas.</li> </ul> <p>The proposal will not prejudice the development of other suitably located, sized and serviced industrial land in the shire and existing approval rights over such land will not change. As these development approvals are taken up over time, additional supply of industrial land will be needed in the long-term.</p>
<p><b>Supply</b>  <i>There is ample land already available to accommodate the demand for industrial land uses in Ayr and in the immediate locality of the subject site.</i></p>	<p><b>Response</b>        Council’s analysis of industrial land use and lot size across the shire revealed that the existing Ayr Industrial Estate is approaching capacity. The industrial land study and draft planning scheme is required to ensure an available long-term supply or ‘reserve’ of industrial land, using an accepted benchmark of 50 years. With</p>



<p><i>The creation of additional industrial land supply will result in adverse impacts on other industrial landowners.</i></p>	<p>the inclusion of the subject site, this is currently available in Burdekin under a range of demand forecast scenarios.</p> <p>The industrial land study found that existing industrial zone land can easily convert and respond quickly to industrial uses over time as demand arises. Therefore, the development will not adversely impact existing industrial landowners whose land is appropriately located and serviced and meets development requirements.</p>
<p><b>Community expectations</b>  <i>The proposed variation to the planning scheme is contrary to community expectation for land use and development on the subject premises and in the Village zone.</i></p>	<p><b>Response</b>        The development is a logical expansion of the existing Ayr Industrial Estate to the immediate south-east. Through the variation request process, an extended statutory timeframe is provided for the community to comment on the proposed development and make submissions.</p> <p>The current planning scheme is outdated, and industrial land circumstances have changed since its adoption. A draft planning scheme is currently being progressed under the <i>Planning Act 2016</i> to reflect the shire's strategic industrial land requirements over the next 25 years as well as community expectations.</p> <p>The Village zone designation for this site does not reflect current circumstances in that it is provided with all essential services, convenience functions and infrastructure within 1km of the urban centre of Ayr and is not required to service surrounding rural land (as is the purpose of the Village zone).</p>
<p><b>Further considerations</b>  <i>There are multiple options available to a local government to incentivise landowners to contribute to the supply of industrial land from within existing zoned land stocks.</i>        For example:</p> <ul style="list-style-type: none"> <li>• Purchase existing zoned land</li> <li>• Joint venture arrangements</li> <li>• Convert investigation sub-areas</li> <li>• Offset infrastructure charges or development costs</li> <li>• Fast-track development approvals</li> </ul>	<p><b>Response</b>        These options are acknowledged; however, are not relevant planning issues that can be considered in the assessment process. They are strategic policy 'levers' and site acquisition and delivery models that may be pursued outside the development assessment process. The development will not preclude existing approvals from being carried out, or new development occurring on industry zone land, which has suitable characteristics.</p>

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**Annexure F**      Design Guidelines & Building Covenants

DRAFT



# Design Guidelines & Building Covenants

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**Ayr Industrial Estate Expansion - Stage 1**

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## Purpose, Introduction & Vision

The Ayr Industrial Precinct is a Burdekin Shire Council (**Council**) initiated development which is expanding the existing Ayr Industrial Estate. The expansion will provide more industrial land through a staged release (the **Expansion Area**). The expansion will establish new services for the community, create local employment opportunities and retain young people in the region, enable economic development and deliver significant social and economic benefits for the community.

To create a modern industrial precinct that maintains a good presentation, this Covenant applies to lots within the Expansion Area. This ensures that the overall estate and landscaping is maintained to a minimum standard, buildings are built to a suitable standard, land is not land banked and the industrial lots are used appropriately.

The Covenants offer peace of mind to all buyers, by ensuring that all owners within the Expansion Area are subject to and must meet the same level of standards.

In the event that a design approval is not strictly within the Covenants provided, it will be determined on its merits. Council encourages buyer's and lot owners to use innovation in design, consider sustainability in construction and diversity in use.

Council will administer the Covenants for the life of the project. Council reserves the right to exercise its full discretion in the refusal, acceptance or critique of any proposal for approval, without creating any legal obligations to a third party.

## 1. Definitions and Interpretation

### 1.1 Definitions

In this document, unless inconsistent with the context or subject matter:

- (a) **Building** means all permanent structures to be located on the Lot, including industrial facility, office and storage;
- (b) **Buyer** means:
  - (i) the buyer listed in the Contract, who will be the owner of the Land once Settlement has been completed; or
  - (ii) the subsequent owner of the Land, who has purchased the Land subsequently from the original buyer and who is required to sign the Deed Poll;as the context dictates;
- (c) **Contract** means the Commercial Land Contract for the Land that these Covenants form part and are attached to;
- (d) **Council** means the Burdekin Shire Council;
- (e) **Covenants** means:
  - (i) this document; and
  - (ii) the Design Guidelines and Building Covenants contained in this document;as the context dictates;
- (f) **Covenant Approval Process** is the procedure outlined in **Annexure A**;
- (g) **Deed Poll** means the Deed Poll contained in **Annexure B**;
- (h) **Expansion Area** means the staged release of blocks of land in the Ayr Industrial Estate;
- (i) **Land** means the lot purchased by the Buyer, in the Contract;
- (j) **Planning Scheme** means the Burdekin Shire Council Planning Scheme, as amended from time to time;
- (k) **QDC** means the Queensland Development Code.

### 1.2 Interpretation

In this document, unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;

- 
- (c) words importing the singular number include the plural number;
  - (d) words importing the plural number include the singular number;
  - (e) the masculine gender must be read as also importing the feminine or neuter gender;
  - (f) a reference to a party includes the party's heirs, executors, successors and permitted assigns;
  - (g) headings are for reference purposes only and must not be used in interpretation;
  - (h) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
  - (i) a reference to a statute includes all regulations and subordinate legislation and amendments;
  - (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
  - (k) a reference to a monetary amount is a reference to an Australian currency amount;
  - (l) an obligation of two or more parties binds them jointly and each of them severally;
  - (m) an obligation incurred in favour of two or more parties is enforceable by them severally;
  - (n) references to time are to local time in Queensland;
  - (o) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
  - (p) a reference to a business day means any day on which trading banks are open for business in Queensland;
  - (q) if any time period specified in this document expires on a day which is not a business day, the period shall expire at the end of the next business day;
  - (r) a reference to a month means a calendar month.

---

## **2. Design Process and Building Covenants**

### **2.1 Approval**

The Buyer must follow the Covenant Approval Process.

### **2.2 Land Use**

- (a) The Lot must only be used for industrial and commercial activities consistent with the Industry Zone of the Planning Scheme.
- (b) At no time is the Lot to be used as:
  - (i) a wrecking yard;
  - (ii) an abattoir;
  - (iii) a metal recycling venue (unless Council has specifically approved such use under an appropriate Development Approval);
  - (iv) a refuse disposal or transfer station;
  - (v) a waste processing location;
  - (vi) a pesticide production or mixing location; or
  - (vii) any type of business or use involving the use or processing of asbestos containing materials.
- (c) At no time should spoil be removed from, nor fill placed upon the Land, unless Council has provided written approval.
- (d) At no time are animals permitted to be kept on the Land, except for the purpose of maintaining security at the site after hours.

### **2.3 Timing of Construction**

The Buyer must:

- (a) Submit a development application within 12 months from the settlement date of the Contract or commence construction no later than 18 months from the settlement date of the Contract, unless written authorisation from Council has been obtained to extend that time; and
- (b) ensure that construction is finalised within two (2) years from commencement of construction.



## **2.4 Building Details**

### **(a) Design and Layout of Land**

All works carried out on the Land must be undertaken strictly in accordance with the relevant plans and specifications which have been approved under the Covenant Approval Process and ensure that:

- (i) any car parking to be located at the front of the lot;
- (ii) storage of pallets or shipping containers are to be located behind the façade alignment of the relevant building; and
- (iii) any item used in production of the relevant business enterprise should not be visible from the frontage of the Land for a prolonged period.

### **(b) Materials Used**

All materials to be used in the construction on the Land must be new unless the use of recycled and refurbished materials in an 'as new' condition has been approved under the Covenant Approval Process (which are to be used as a feature only).

Preferred building materials include:

- Colourbond;
- Rendered block;
- Rendered brick; and
- Painted Tile Concrete Panel.

### **(c) Building Scale**

The site coverage is not to exceed 75%. Building setbacks are to be in accordance with the Queensland Development Code.

### **(d) Filling of Land**

At no time, will the buyer engage in or cause another person on the Buyer's behalf to cause fill to be deposited into or onto the lot and/or Land. That is, the action of filling the Lot is specifically prohibited so as to not affect flood levels or neighbouring lots.

## **2.5 Access – the Development**

(a) At no time during Construction, or occupation of the Land, is the Buyer, its invitees, customers, contractors, employees, agents or permittees allowed to or given the right to access the Expansion Area from:

- (i) Craig Street; or
- (ii) an Easement (formal, or informal),

with the only permitted access point through the current Industrial Estate being via Oakes Street, and the dedicated road for access.

Access to and from the Bruce Highway is to only be via a Council approved road if constructed. Please note that Council is currently investigating a potential highway access to the expansion area as per the proposed masterplan. Approvals are required for this to occur.

- (b) In the event that heavy vehicle access (for example, a B-Double) is required, then appropriate measures are to be taken by the Buyer with approval sought through the National Heavy Vehicle Regulator.

## **2.6 Vehicular Access – The Land**

Any driveway and crossover must:

- be constructed of concrete or asphalt;
- be constructed to the standard and requirements imposed and enforced by Council; and
- not be constructed of crushed rock.

Carparking areas are to be sealed and in accordance with the standard and requirements imposed and enforced by Council.

## **2.7 Landscaping**

- (a) Landscaping of the Land must be;
- (i) appropriate and enhance the general amenity of the local area and Industrial Estate; and
  - (ii) maintained at all times in a neat and tidy fashion.
- (b) The Buyer is directed to Council's approved plant species guide for guidance on Council approved plant selection.
- (c) All landscaping should be completed within three (3) months of completion of construction of the Building on the Land.

## **2.8 Fencing of Land**

- (a) The cost of boundary fencing is to be shared by adjoining owners in accordance with relevant legislation.
- (b) For lots that abound Council owned land (i.e. the adjoining owner is Council), the cost of boundary fencing is to be borne solely by the Buyer with no contribution by Council.
- (c) Council has a requirement for the Buyer to install poly coated fencing as a minimum standard for front of Land boundary fencing.

## **2.9 Lighting of Land**

- (a) The Buyer must install adequate lighting for the purpose of:
  - (i) security of the Land and Buildings;
  - (ii) safety of the users of the Industrial Estate, and surrounding areas; and
  - (iii) general illumination at night;

in line with Council's guidelines for lighting. A lighting plan is to be included with any approval sought from Council's design and building teams.
- (b) At all times however, the lighting installed on any Land is not to impede or impact other land owners in the Industrial Estate or pose a risk to road users.

## **2.10 Maintenance of Land, Refuse Facilities and Waste Management**

- (a) The Buyer must keep the land and all improvements on the Land in a neat and tidy condition at all times.
- (b) The Buyer must not permit the excessive growth of grass, weeds or any other vegetation on the Land.
- (c) Refuse arrangements must be provided by the Buyer to the satisfaction of Council. The approved waste storage area:
  - (i) is to be of sufficient size and design to house all garbage bins including recycling bins;
  - (ii) be suitable paved; and
  - (iii) have installed a hose cock fitted in close proximity to the enclosure and drain to sewer via a legal sewer connection (which will be provided by Council).
- (d) All waste generated as a result of construction of the Land is to be effectively controlled and contained entirely within the boundaries of the site prior to disposal.
- (e) All waste is to be disposed of in accordance with the *Environmental Protection Regulation 2019* (Qld) and Council's waste management policy.

## **2.11 Signage**

Any signage that the Buyer chooses to install for the associated business or construction, must be in line with existing amenity and not adversely impact on neighbouring lots.

## **2.12 Right of Inspection**

### **(a) Notice of inspection**

Council (or its duly authorised representative) may, upon giving at least three (3) days prior written notice to the Buyer, enter upon and inspect the Land and any works constructed thereon to ensure compliance with these Covenants.

**(b) Notice to comply**

If, after inspecting the Land, Council forms the opinion that the Buyer is in breach of any of its obligations under these Covenants, Council may give the Buyer written notice to rectify the breach within 30 days.

**(c) Serious breaches**

If Council considers the Buyer's breach of its obligations under these Covenants serious enough to warrant immediate attention, then Council may exercise its right to enter the Land under the following subclause, without first giving the Buyer notice to rectify the breach.

**(d) Right to enter and perform works**

If:

- (i) the Buyer fails to comply with a notice to rectify within the 30 day time limit;  
or
- (ii) Council considers the Buyer to be in serious breach of its obligations under these Covenants;

then the Council may by itself, its agents and workmen together with all necessary material, plant, equipment and appliances enter upon the Land at all reasonable times for the purpose of performing all works necessary to ensure compliance with the Buyer's obligations under these Covenants (the **Works**). The Works may include, but are not limited to:

- (iii) demolishing any structure or thing, on or affixed to the Land which was erected, installed or created in contravention of these Covenants; and/or
- (iv) modifying, changing or altering any structure of thing, on or affixed to the Land, in such a way as to make the structure or thing compliant with these Covenants.

**(e) Costs of performing works**

All work carried out by Council, its agents and workmen under this Clause, will be at the expense of the Buyer, and the Buyer must reimburse Council for all costs of that work upon demand by way of liquidated damages.

**2.13 General Matters**

**(a) Identification of Building Covenant**

These Covenants form part of the Contract, within the Estate between the Council and Buyer, named herein together with the executors, administrators, permitted assigns or successors in title of the Buyer.

**(b) Assignment of Covenant**

The Buyer acknowledges that it will not sell, transfer or otherwise dispose of the Land without first delivering to Council a Deed of Covenant duly executed by such buyer, transferee or disponee in favour of Council containing covenants in the same terms as are set forth in this Covenant including an obligation for each future buyer, transferee or disponee to obtain a further such deed of covenant from any subsequent buyer, transferee or disponee until the expiry of this Covenant. The Buyer agrees to provide Council with a photocopy of any agreement that purports to sell, transfer or dispose of the Land immediately such agreement has been executed by the parties to that agreement.

**(c) Disclaimer**

- (i) Council will have due regard to the provisions of these Covenants, but may, in its absolutely discretion, grant or refuse approval subject to such terms and conditions as it may determine.
- (ii) The requirement for approval by Council under this clause is in addition to and not in lieu of any requirement of any other Relevant Authority.
- (iii) Any approval granted by Council shall not constitute either any agreement or representation as to adequacy, suitability or fitness of any plans and specifications or to the siting of the improvements of that the Council will grant its approval and the Buyer acknowledges that it has not placed any reliance on such approval.

**(d) Right to Amend**

Council reserves the right at:

- (i) the request of other buyers; or
- (ii) at its own discretion;

to vary or exclude any of the obligations under these Covenants provided that any variation or exclusion will be in line with the intention of the Covenants. The Buyer releases the Council from any action whatsoever for any action taken in the amendment of these Covenants.

**(e) Period of Covenant**

The Covenant shall remain in full force and effect until the later of:

- (i) the date which is one (1) year after the completion of the construction on the final land of the Expansion Area; or
- (ii) at such time that Council shall so determine, in its absolute discretion.

### 3. Executed as a Deed

#### Council

**SIGNED** by Burdekin Shire Council by the )  
**Chief Executive Officer**, who has )  
 appropriate delegation to execute this )  
 Deed Poll, and has not received revocation )  
 of that delegation, in the presence of: )

\_\_\_\_\_  
 Signature of Chief Executive Officer

\_\_\_\_\_  
 Print full name of Chief Executive Officer

\_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Print full name of witness

#### Signed by Buyer (Where Buyer is an Individual/s)

**SIGNED** by )  
 )  
 - )  
 - )  
 [Name of Buyer/s: where an individual] )  
 in the presence of: )

\_\_\_\_\_  
 [Buyer 1 signature]

\_\_\_\_\_  
 [Buyer 2 signature]

\_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Print Full name of witness

#### Signed by Buyer (Where Buyer is a Company)

**SIGNED** by )  
 )  
 )  
 [Name of Buyer: where a company] )  
 )  
 )  
 ACN: \_\_\_\_\_ )  
 in accordance with s 127(1) of the *Corporations Act* )  
 2001: )

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

## Annexure A Covenant Approval Process

<b>Step 1</b>	<p><b>Purchase Land and begin design of your industrial premises/building</b></p> <ul style="list-style-type: none"> <li>- You should ensure that your Builder and/or Architect has a copy of these Covenants.</li> </ul>
<b>Step 2</b>	<p><b>Settle on your Land</b></p> <ul style="list-style-type: none"> <li>- This is the legal transfer of ownership of your Land.</li> </ul>
<b>Step 3</b>	<p><b>Contact Council to discuss relevant approvals required for proposed development</b></p> <ul style="list-style-type: none"> <li>- Provide full details of your proposed works to Council to understand what approvals are required for planning, building, plumbing and sanitary drainage works and trade waste.</li> </ul>
<b>Step 4</b>	<p><b>Planning Approval, Building Works and Plumbing and Sanitary Drainage Works and trade waste Applications</b></p> <ul style="list-style-type: none"> <li>- Submit applications to Council, for Development Approvals.</li> </ul>
<b>Step 5</b>	<p><b>Start construction</b></p> <ul style="list-style-type: none"> <li>- Construction on your land must commence no later than 18 months from the settlement date of the Contract.</li> <li>- Construction must be finalised within two (2) years from commencement.</li> </ul>
<b>Step 6</b>	<p><b>Move in</b></p> <ul style="list-style-type: none"> <li>- Once you have completed construction, complied with all conditions and all permits and obtained a Certificate of Occupancy, you can commence using the Building as intended.</li> </ul>

---

## **Annexure B** Deed Poll



## DEED POLL

**Dated:**

**Parties:**

\_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_  
(Seller)

\_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_  
(Buyer)

**Burdekin Shire Council** of PO Box 974, Ayr in the State of Queensland  
(Council)

**Recitals:**

- A. Council is the developer of the Industrial Estate.
- B. The Seller bought the Property from Council under the Original Contract.
- C. The Original Contract included the Building Covenants.
- D. The Seller agreed in the Original Contract that if it disposed of the Property, the Seller would obtain from the Buyer before completing the transfer, a covenant in favour of Council that the Buyer would comply with the Conditions and the Building Covenants contained in the Original Contract.
- E. The Buyer proposes to buy the Property from the Seller.
- F. The Buyer agrees with Council to be bound by the Building Covenants and the terms set out in this Agreement.

**The Parties Agree:**

**1. DEFINITIONS**

- (a) In this Agreement:
  - (i) **Agreement** means this Deed Poll including any schedule or annexure to it;
  - (ii) **Building Covenants** means the Design Guidelines and Building Covenants for the Property in Error! Reference source not found.;
  - (iii) **Buyer** means the parties listed above, as Buyer;
  - (iv) **Contract** means the contract between the Buyer and the Seller for the sale of the Property;
  - (v) **Council** means Burdekin Shire Council;

- (vi) **Original Contract** means the contract between the Seller and Council for the sale of the Property;
- (vii) **Property** means the land described as:
- Address: \_\_\_\_\_
- Description: Lot \_\_\_\_\_ on \_\_\_\_\_
- (viii) **Seller** means the parties listed above, as Seller.

## 2. AGREEMENT

- (a) The Buyer covenants and agrees with Council that:
- (i) the reference to 'Buyer' in the Building Covenants means the Buyer in this Agreement;
  - (ii) the reference to 'Seller' in the Building Covenants means the Council in this Agreement;
  - (iii) the Buyer is bound by the Building Covenants.
- (b) **Construction Works**
- (i) The Buyer shall carry out any building works and plumbing and sanitary drainage works and trade waste on the Property strictly in accordance with the plans submitted to and approved by Council and shall obtain Council's prior approval of any variation to approved plans which affect the external appearance of the building works.
  - (ii) The Buyer must complete construction of building on the Property within 2 years from the date that construction of the building commences.
- (c) **Development of the Estate**
- (i) The Buyer acknowledges that Council is engaged in the systematic development of the estate of which the Property forms part. This development will involve town planning applications and building and other applications to be made by Council from time to time to various authorities. The Buyer shall not make or maintain, either alone or jointly, any submission, objection, appeal, claim, demand or suit of any kind against any application made or entered into by Council and/or persons or companies associated with Council for the future development of any area of the parcel.
  - (ii) Any promotional or marketing material showing the development of the estate represents the Council's current vision for the development and this may change. The Buyer confirms that it has not relied on any such material or any other representation when entering into the Contract.
  - (iii) Council makes no representation in relation to the future development of the estate. The final type, form, location and timing for the development of the

estate will be decided by Council in its discretion having regard to market forces and demand for other factors.

### **3. CONDITIONS**

#### **(a) Copy of Building Covenants**

- (i) The Buyer acknowledges that before signing the Contract, it received from the Seller the Building Covenants.
- (ii) The Buyer must comply with the Building Covenants. The Building Covenants will be treated as if they were obligations and covenants by the Buyer in favour of the Council.
- (iii) If the Buyer disposes of the Property, the Buyer must obtain from the transferee, before the transfer is completed, a Deed Poll in favour of the Council that the transferee will comply with the terms of this Agreement and the Building Covenants in the form of the Building Covenants current at the date of the transfer. The Buyer must deliver the abovementioned Deed Poll (duly executed by the Buyer and the transferee) to the Council prior to the Settlement of any sale/disposal/transfer of the Property.
- (iv) The Buyer has no claim or action against the Council if the Council adopts an altered form of Building Covenants in contracts for the sale of other land within the estate of which the Property forms part.

### **4. SEVERABILITY**

If anything in this Agreement is unenforceable, illegal or void then it is severed, and the rest of this Agreement remains in force.

### **5. GOVERNING LAW AND JURISDICTION**

The law in Queensland governs this Agreement.

### **6. PARTIES**

- (a) If a party consists of more than one (1) person, this Agreement binds each of them separately and any two (2) or more of them jointly.
- (b) Any obligations, representation or warranty in favour or more than one (1) person is for the benefit of them separately and jointly.
- (c) A party which is a trustee is bound both personally and in its capacity as a trustee.

### **7. INTERPREATION**

- (a) Reference to:
  - (i) one gender includes the others;
  - (ii) the singular includes the plural and the plural includes the singular;

- (iii) a person includes a body corporate;
  - (iv) a party includes the party's executors, administrators, successors and permitted assigns; and
  - (v) money is to Australian dollars, unless otherwise stated.
- (b) "Including" and similar expressions are not words of limitation.
- (c) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (d) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.
- (e) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation the Agreement or the inclusion of a provision in the Agreement.
- (f) If any act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

## **8. COUNTERPARTS**

This document may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax or email.

## Executed as a Deed

**SIGNED by Burdekin Shire Council by the** )  
**Chief Executive Officer, who has** )  
 appropriate delegation to execute this )  
 Deed Poll, and has not received revocation )  
 of that delegation, in the presence of: )

\_\_\_\_\_  
 Signature of Chief Executive Officer

\_\_\_\_\_  
 Print full name of Chief Executive Officer

\_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Print full name of witness

### Signed by Buyer (Where Buyer is an Individual/s)

**SIGNED by** )  
 )  
 - )  
 \_\_\_\_\_ )  
 - )  
 \_\_\_\_\_ )  
 [Name of Buyer/s: where an individual] )  
 in the presence of: )

\_\_\_\_\_  
 [Buyer 1 signature]

\_\_\_\_\_  
 [Buyer 2 signature]

\_\_\_\_\_  
 Signature of witness

\_\_\_\_\_  
 Date Signed

\_\_\_\_\_  
 Print Full name of witness

### Signed by Buyer (Where Buyer is a Company)

**SIGNED by** )  
 )  
 \_\_\_\_\_ )  
 [Name of Buyer: where a company] )  
 )  
 \_\_\_\_\_ )  
 ACN: \_\_\_\_\_ )  
 in accordance with s 127(1) of the *Corporations Act* )  
*2001*: )

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

\_\_\_\_\_  
 [Signature]

\_\_\_\_\_  
 [Print name]  
 Director/Company Secretary/Sole Director  
 [strike out if not applicable]

**Signed by Seller (Where Seller is an Individual/s)**

**SIGNED** by \_\_\_\_\_ )

\_\_\_\_\_ )

- \_\_\_\_\_ )

- \_\_\_\_\_ )

[Name of Seller/s: where an individual] \_\_\_\_\_ )

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Print Full name of witness

\_\_\_\_\_  
[Seller 1 signature]

\_\_\_\_\_  
[Seller 2 signature]

\_\_\_\_\_  
Date Signed

**Signed by Seller (Where Seller is a Company)**

**SIGNED** by \_\_\_\_\_ )

\_\_\_\_\_ )

\_\_\_\_\_ )

[Name of Seller: where a company] \_\_\_\_\_ )

\_\_\_\_\_ )

ACN: \_\_\_\_\_ )

in accordance with s 127(1) of the *Corporations Act* )

2001: \_\_\_\_\_ )

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name]

Director/Company Secretary/Sole Director

[strike out if not applicable]

\_\_\_\_\_  
[Signature]

\_\_\_\_\_  
[Print name]

Director/Company Secretary/Sole Director

[strike out if not applicable]